Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber, Extended Composition)

13 December 2017*

(Economic and monetary policy — Prudential supervision of credit institutions — Article 4(3) of Regulation (EU) No 1024/2013 — Prudential supervision on a consolidated basis — Supervised group — Institutions permanently affiliated to a central body — Article 2(21)(c) of Regulation (EU) No 468/2014 — Article 10 of Regulation (EU) No 575/2013 — Capital requirements — Article 16(1)(c) and (2)(a) of Regulation No 1024/2013)

In Case T-52/16,

Crédit Mutuel Arkéa, established in Relecq Kerhuon (France), represented by H. Savoie and P. Mele, lawyers,

applicant,

v

European Central Bank (ECB), represented by K. Lackhoff, R. Bax and C. Olivier, acting as Agents, and by M. Pittie, lawyer,

defendant,

supported by

European Commission, represented by V. Di Bucci and K.-P. Wojcik, acting as Agents,

intervener,

ACTION pursuant to Article 263 TFEU for annulment of Decision ECB/SSM/2015 — 9695000CG 7B84NLR5984/40 of the ECB of 4 December 2015 setting out the prudential requirements for the Crédit Mutuel group,

THE GENERAL COURT (Second Chamber, Extended Composition),

composed of M. Prek (Rapporteur), President, E. Buttigieg, F. Schalin, B. Berke and J. Costeira, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the written part of the procedure and further to the hearing on 6 June 2017,

gives the following

* Language of the case: French.

Judgment

I. Background to the dispute

1 Crédit Mutuel is a non-centralised banking group consisting of a network of local branches with the status of cooperative companies. Each local branch of Crédit Mutuel must be affiliated to a regional federation and each federation must be affiliated to the Confédération nationale du Crédit Mutuel ('the CNCM'), the central body of the network within the meaning of Articles L.511-30 and L.511-31 of the code monétaire et financier français (French monetary and financial code, 'the CMF'). At national level, Crédit Mutuel also encompasses Caisse centrale du Crédit Mutuel ('CCCM'), which is a public limited cooperative finance company with variable share capital, authorised as a credit institution, owned by the members of the network.

2 The applicant, Crédit Mutuel Arkéa, is a public limited cooperative finance company with variable share capital, authorised as a credit institution. It was founded in 2002 through the merger of several regional credit union federations. Other federations joined forces to establish CM11-CIC while some remained independent.

3 By letter of 19 September 2014, the applicant submitted to the European Central Bank (ECB) its analysis on the impossibility of it being subject to prudential supervision by the ECB through the CNCM. By letter of 10 November 2014, the ECB stated that it would bring the matter before the competent French authorities.

4 On 19 December 2014, the ECB sent the CNCM a draft decision setting out the prudential requirements for the Crédit Mutuel group. It also asked the CNCM to ensure that the draft was forwarded to the different entities making up the Crédit Mutuel group and prescribed a time limit for the submission of observations by those entities. On 16 January 2015, the applicant submitted observations to the ECB. On 30 January 2015, the CNCM commented on the observations submitted by the applicant.

5 On 19 February 2015, the ECB sent the CNCM a revised draft decision setting out the prudential requirements for the Crédit Mutuel group and its constituent entities. It also asked the CNCM to ensure that the revised draft was forwarded to those entities and prescribed a time limit for the submission of observations by them. On 27 March 2015, the applicant submitted observations.

6 On 17 June 2015, the ECB adopted a decision setting out the prudential requirements for the Crédit Mutuel group, in which it made clear that it was the consolidating supervisor of the CNCM and the competent authority with responsibility for supervising the entities listed in that decision, which included the applicant (recital 1). Article 2(1) of that decision stated that the CNCM ensured that the Crédit Mutuel group complied at all times with the requirements set out in Annex I. It followed from Article 2(3) of the decision that the applicant was required to comply at all times with the requirements set out in Annex II-2, which imposed a Tier 1 capital ratio ('CET 1 capital') of 11%.

7 On 17 July 2015, the applicant requested a review of that decision pursuant to Article 24 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63) ('the Basic Regulation'), read in conjunction with Article 7 of Decision 2014/360/EU of the ECB of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ 2014 L 175, p. 47). A hearing was held on 31 August 2015 before the Administrative Board of Review ('the Board of Review').

8 On 14 September 2015, the Board of Review issued an opinion finding the ECB's decision to be lawful. In that opinion, the Board of Review stated, in essence, that the applicant's criticisms of the decision of 17 June 2015 could be divided into three categories: its opposition to recourse being had to consolidated prudential supervision of the Crédit Mutuel group through the CNCM on the ground that the latter is not a credit institution (first ground for complaint); its claim that no 'Crédit Mutuel group' as such existed (second ground for complaint); and its objection to the ECB's decision to increase its CET 1 capital ratio requirements from 8 to 11% (third ground for complaint).

9 As regards the first ground for complaint, in the first place, the Board of Review recalled that the ECB, by decision of 1 September 2014, had considered the Crédit Mutuel group to be a significant supervised group and also noted that the applicant was a member of that group and that the CNCM was the highest level of consolidation within it. In the second place, it pointed out that the concept of central body in Article 2(21)(c) of Regulation (EU) No 468/2014 of the ECB of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the ECB and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1) ('the SSM Framework Regulation') and Article 10 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1, corrigenda OJ 2013 L 208, p. 68, and OJ 2013 L 321, p. 6) was not defined by EU law and that there was no requirement for the central body to be a credit institution, with reference, in support of that interpretation, to the guidelines of the European Committee of Banking Supervisors (ECBS) of 18 November 2010 ('the ECBS guidelines') and Article 4(1)(g) of the Basic Regulation. In the third place, the Board of Review observed that it was not necessary for the ECB to have the complete set of supervisory or penalty powers in relation to the parent entity of a group in order to exercise prudential supervision on a consolidated basis. In the fourth place, it reiterated that, prior to the transfer of that power to the ECB, the Crédit Mutuel group was subject to prudential supervision on a consolidated basis by the competent French authority, namely the Autorité de contrôle prudentiel et de résolution (Authority for Prudential Supervision and Resolution, France) ('the ACPR'), through the CNCM.

10 As regards the second ground for complaint, the Board of Review found that the Crédit Mutuel group satisfied the conditions laid down in Article 10(1) of Regulation No 575/2013, to which Article 2(21)(c) of the SSM Framework Regulation refers. In the first place, the Board of Review considered that the status of the CNCM as an association did not preclude the existence of joint and several liability with its affiliated institutions. In the second place, it stated that the accounts of the Crédit Mutuel group as a whole were drawn up on a consolidated basis. In the third place, it took the view that the ECB was right to find that the CNCM had the power to issue instructions to the management of its affiliated institutions.

11 In respect of the third ground for complaint, the Board of Review submitted that the ECB's assessments as regards the level of the applicant's CET 1 capital requirements were not vitiated by any manifest error of assessment and were not disproportionate. In that connection, it drew attention to the ongoing disagreements between the applicant and the CNCM in so far as they are indicative of governance problems liable to generate additional risks.

12 On 5 October 2015, the ECB adopted Decision ECB/SSM/2015 — 9695000CG 7B84NLR5984/28 setting out the prudential requirements for the Crédit Mutuel group. Pursuant to Article 24(7) of the Basic Regulation, that decision repealed and replaced the decision of 17 June 2015, but left its content unchanged.

13 On 9 October 2015, the ECB adopted a draft decision, on which the applicant was given the opportunity to comment.

14 On 4 December 2015, the ECB adopted Decision ECB/SSM/2015 — 9695000CG 7B84NLR5984/40 ('the contested decision') setting out new prudential requirements for the Crédit Mutuel group and its constituent entities. Paragraph 1 of the contested decision concerns the prudential requirements applicable to the Crédit Mutuel group on a consolidated basis, while paragraph 3 deals with the requirements applicable to the applicant. In the latter paragraph, the ECB set the CET 1 capital requirements of the applicant at 10.75%.

II. Procedure and forms of order sought

15 By application lodged at the Court Registry on 3 February 2016, the applicant brought the present action.

16 By document lodged at the Court Registry on 21 March 2016, the European Commission applied for leave to intervene in support of the form of order sought by the ECB.

17 By decision of 8 June 2016, the President of the Fourth Chamber of the Court granted the Commission leave to intervene in support of the form of order sought by the ECB.

18 On 20 July 2016, the Commission lodged its statement in intervention.

19 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Second Chamber, to which this case was accordingly assigned.

20 On 3 April 2017, by way of measures of organisation of procedure under Article 89 of the Rules of Procedure of the General Court, the Court asked the ECB to produce a number of documents. The ECB complied with that request within the prescribed period.

21 On the proposal of the Second Chamber of the Court, the Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a Chamber sitting in extended composition.

22 On the proposal of the Judge-Rapporteur, the Court (Second Chamber, Extended Composition) decided to open the oral part of the procedure.

23 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 6 June 2017.

24 The applicant claims that the Court should annul the contested decision.

25 The ECB and the Commission contend that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

III. Law

A. Admissibility of the action

26 Without formally raising a plea of inadmissibility under Article 130 of the Rules of Procedure, the ECB contends that the action is inadmissible. First, the ECB points out that authority to bring this action was given by the chairman of the board of directors of the applicant, who does not have any powers

of representation under French law. Secondly, it submits that the applicant does not have standing to challenge the contested decision, with the exception of paragraph 3 thereof. Thirdly, it claims that the applicant has no legal interest in bringing proceedings.

27 The applicant contends that the plea of inadmissibility raised by the ECB should be dismissed.

1. Validity of the authority to act granted to the applicant's advisers

28 The ECB notes that the authority to act which was initially granted to the applicant's advisers was drawn up by the chairman of its board of directors, although it is clear from the decisions of the French courts interpreting Articles L.225-51-1 and L.225-56 of the code de commerce français (French Commercial Code) that the chairman of the board of directors of a public limited company does not have the power to represent that company legally, such power being in the hands of the general manager alone, except in cases where the amalgamation of those duties is justified.

29 Under Article 51(3) of the Rules of Procedure, where the party represented by the lawyer is a legal person governed by private law, the lawyer must lodge at the Registry an authority to act given by that person. Furthermore, pursuant to Article 51(4) of the Rules, if the authority is not lodged, the Registrar is to prescribe a reasonable time limit within which the party concerned is to produce it.

30 Article 51(4) of the Rules of Procedure must be interpreted as meaning that it is possible to remedy a failure to grant an authority to act on the date on which the action is lodged by means of an *ex post* submission of any document confirming the existence of that authority (see, by analogy, judgment of 4 February 2015, *KSR* v *OHIM — Lampenwelt (Moon)*, T-374/13, EU:T:2015:69, paragraphs 12 and 13; also see, as regards the Rules of Procedure of the Court of Justice, judgment of 19 June 2014, *Commune de Millau and SEMEA* v *Commission*, C-531/12 P, EU:C:2014:2008, paragraphs 33 and 34).

31 In the present case, following a request to that effect, the applicant's lawyers forwarded to the Court a document issued by its authorised representative, namely its general manager, confirming its intention to pursue the action.

32 The action cannot, therefore, be regarded as inadmissible on the ground of an invalid authority to act.

2. Whether the applicant has standing to challenge paragraph 1 of the contested decision

33 The ECB essentially argues that the applicant has *locus standi* only in respect of the part of the contested decision concerning it, namely paragraph 3.

34 Although drafted as a single decision, the contested decision must be regarded as a group of individual decisions (see, to that effect and by analogy, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraph 100) imposing prudential requirements on each of the entities listed in paragraph 17.1 thereof. It should be noted that even though, under paragraph 22.2 of the contested decision, that decision is notified to the CNCM, it is the task of the CNCM, pursuant to that paragraph, to provide each of the other group entities with the part of the contested decision concerning it.

35 As regards paragraph 1 of the contested decision, in so far as it follows from that paragraph that the CNCM is to ensure that the Crédit Mutuel group complies with certain prudential requirements on a consolidated basis, it must be inferred that the CNCM alone is the person to whom the decision is addressed within the meaning of Article 263 TFEU.

36 Consequently, the applicant is entitled to challenge paragraph 1 of the contested decision only if that aspect of the decision is of direct and individual concern to it or if that aspect is of direct concern to it and the contested decision is a regulatory act not entailing implementing measures (see, to that effect, judgment of 26 September 2014, *Royal Scandinavian Casino Århus* v *Commission*, T-615/11, not published, EU:T:2014:838, paragraph 25 and the case-law cited).

37 Since the applicant is considered by the ECB to form part of the Crédit Mutuel group over which the ECB has decided to exercise prudential supervision on a consolidated basis through the CNCM, paragraph 1 of the contested decision must be regarded as being of direct and individual concern to it, in so far as that provision confers responsibility on the CNCM for the prudential supervision of the applicant vis-à-vis the ECB.

38 It necessarily follows that the applicant has standing to challenge not only paragraph 3 of the contested decision, but also paragraph 1 thereof.

3. Whether the applicant has a legal interest in challenging the contested decision

39 The ECB disputes that the applicant has a legal interest in bringing proceedings and, to that end, submits that the applicant has never objected to the prudential supervision on a consolidated basis of the Crédit Mutuel group by the ACPR and that it has a higher CET 1 capital ratio than that imposed on it by the contested decision.

40 It is settled case-law that an interest in the annulment of a measure exists only if the annulment of the measure is of itself capable of having legal consequences (see, to that effect, judgments of 24 June 1986, *AKZO Chemie* v *Commission*, 53/85, EU:C:1986:256, paragraph 21, and of 25 March 1999, *Gencor* v *Commission*, T-102/96, EU:T:1999:65, paragraph 40).

41 In so far as paragraph 1 of the contested decision means that the applicant forms part of the Crédit Mutuel group and is to be supervised through the CNCM, when the applicant's view is that it comes directly under the prudential supervision of the ECB, it has a legal interest in challenging that aspect of the contested decision, regardless of its conduct when prudential supervision was exercised by the ACPR.

42 The applicant also has a legal interest in seeking the annulment of paragraph 3 of the contested decision inasmuch as it requires the applicant to have a minimum level of CET 1 capital for as long as that decision is in force, regardless of the level of capital it had when the decision was adopted.

43 It the light of the foregoing, the pleas of inadmissibility raised by the ECB must be rejected.

B. Substance

44 In support of its action, the applicant puts forward a set of arguments which can be divided into three pleas in law.

45 Although the arguments put forward in the first two pleas are directed at the contested decision in general terms, they are really concerned with the lawfulness of paragraph 1 of that decision, by which the ECB organises the consolidated prudential supervision of the Crédit Mutuel group through the CNCM. By its first plea, the applicant submits, in essence, that that aspect of the contested decision is unlawful because the CNCM is not a credit institution and cannot, therefore, come under the prudential supervision of the ECB. By its second plea, it claims that the ECB was wrong to find that a 'group' exists for prudential supervision purposes.

46 By its third plea, the applicant essentially objects to the setting of its CET 1 capital at 10.75%, as a result of the imposition of a capital requirement going beyond the minimum legal requirements, pursuant to Article 16(1)(c) and (2)(a) of the Basic Regulation. Even though that plea is directed against the contested decision as a whole, in actual fact it is concerned only with the lawfulness of paragraph 3 of the decision, which relates to the prudential requirements imposed on the applicant.

1. First and second pleas in law concerning the lawfulness of paragraph 1 of the contested decision

47 It follows from paragraph 1 of the contested decision that the ECB organises the consolidated prudential supervision of the Crédit Mutuel group through the CNCM, tasking the latter with ensuring that the group complies with the requirements set out in that paragraph.

48 The ECB's claim that the first and second pleas are ineffective because the applicant admitted to being a significant entity for the purpose of Article 6(4) of the Basic Regulation, coming under the direct prudential supervision of the ECB, must be rejected at the outset. By its first two pleas, the applicant challenges the manner in which such supervision is exercised with respect to it, namely through the CNCM in so far as the applicant forms part of the Crédit Mutuel group.

49 It should also be pointed out that, although the reasons for the ECB's decision to organise the consolidated prudential supervision of the Crédit Mutuel group through the CNCM do not expressly appear in the contested decision, the fact remains that, as regards that particular aspect of the contested decision, the ECB reiterated the view it took in its decision of 5 October 2015. In so far as the ECB ruled in conformity with the Board of Review's opinion, which formed part of the context of that decision and contained a statement of reasons in that respect, reproduced in paragraphs 8 to 10 above, it may be considered that, in the decision of 5 October 2015, the ECB endorsed the reasons set out in the opinion (see, to that effect, judgment of 16 May 2017, *Landeskreditbank Baden-Württemberg* v *ECB*, T-122/15, under appeal, EU:T:2017:337, paragraphs 125 to 127).

50 Similarly, to the extent that, as regards the conduct of prudential supervision of the Crédit Mutuel group through the CNCM, the ECB follows the same approach in the contested decision as in the decision of 5 October 2015, it must be held that the reasons given in the Board of Review's opinion may be taken into account in the examination of the contested decision's lawfulness.

51 In its first two pleas in law, the applicant challenges the ECB's interpretation of Article 2(21)(c) of the SSM Framework Regulation as well as the conditions laid down in Article 10(1) of Regulation No 575/2013, to which the former refers.

52 Under Article 2(21)(c) of the SSM Framework Regulation, 'supervised group' is to mean, inter alia, 'supervised entities each having their head office in the same participating Member State provided that they are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation … No 575/2013 and which is established in the same participating Member State'.

53 Article 10 of Regulation No 575/2013, headed 'Waiver for credit institutions permanently affiliated to a central body', provides:

'1. Competent authorities may, in accordance with national law, partially or fully waive the application of the requirements set out in Parts Two to Eight to one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State, if the following conditions are met:

(a) the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;

(b) the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions;

(c) the management of the central body is empowered to issue instructions to the management of the affiliated institutions.'

54 According to settled case-law, it is necessary, in interpreting a provision of EU law, to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgment of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited).

55 In the circumstances of this case, it seems useful to apply a teleological and contextual interpretation of Article 2(21)(c) of the SSM Framework Regulation before examining the first two pleas raised by the applicant.

(a) Teleological and contextual interpretation of Article 2(21)(c) of the SSM Framework Regulation

56 As regards, in the first place, the teleological interpretation of Article 2(21)(c) of the SSM Framework Regulation, it should be noted that, according to recital 9 of that regulation, its aim is to develop and specify the cooperation procedures established in the Basic Regulation between the ECB and the national competent authorities within the Single Supervisory Mechanism ('the SSM') as well as with the national designated authorities. It is therefore also appropriate to take account of the objectives of the Basic Regulation when applying a teleological interpretation of Article 2(21)(c) of the SSM Framework Regulation.

57 In that connection, it should be noted that the prudential supervision of groups of credit institutions on a consolidated basis has essentially two aims.

58 The first aim is to enable the ECB to identify the risks likely to affect a credit institution which derive not from the institution itself, but from the group of which it forms part.

59 Thus, recital 26 of the Basic Regulation provides as follows:

'Risks for the safety and soundness of a credit institution can arise both at the level of an individual credit institution and at the level of a banking group or of a financial conglomerate. Specific supervisory arrangements to mitigate those risks are important to ensure the safety and soundness of credit institutions. In addition to supervision of individual credit institutions, the ECB's tasks should include supervision at the consolidated level …'

60 The second aim pursued by the prudential supervision of groups of credit institutions on a consolidated basis is to avoid the prudential supervision of the entities making up those groups being fragmented between different supervisory authorities.

61 That is apparent, in particular, first, from the fact that according to recital 38 and Article 6(4) of the Basic Regulation, the assessment of the significance of a credit institution, which determines whether certain prudential supervision tasks will be carried out by the ECB alone or decentralised under the SSM (see, to that effect, judgment of 16 May 2017, *Landeskreditbank Baden-Württemberg* v *ECB*, T-122/15, under appeal, EU:T:2017:337, paragraph 63), is conducted at the highest level of consolidation within participating Member States. That aim is reproduced in Article 40(1) and (2)(a) of the SSM Framework Regulation in relation to supervised groups.

62 The above aim is also apparent, secondly, from Article 40(2) of the SSM Framework Regulation, which provides that if an entity that is part of a group comes under the prudential supervision of the ECB, either because it fulfils the direct public financial assistance criterion or is one of the three most significant credit institutions in a participating Member State, that supervision will be extended to the entire group.

63 It follows from the foregoing that, in order to comply with the aims of the Basic Regulation, Article 2(21)(c) of the SSM Framework Regulation and the conditions laid down in Article 10(1) of Regulation No 575/2013 to which it refers must be interpreted in the light of the legislature's intention to enable the ECB to have an overall picture of the risks likely to affect a credit institution and to avoid the fragmentation of prudential supervision between the ECB and national authorities.

64 As regards the aim of Article 10(1) of Regulation No 575/2013, it should be noted that that regulation concerns the prudential requirements applicable to credit institutions. In that context, the objective pursued by Article 10(1) of Regulation No 575/2013 is clearly apparent from its wording. It is to allow the competent authorities to waive in part or in full the application of certain requirements set out in the regulation to one or more credit institutions situated in the same Member State and which are permanently affiliated to a central body which supervises them and which is established in the same Member State. Similarly, under Article 10(2) of that regulation, the competent authorities are able to waive the application of the same prudential requirements to the central body on an individual basis.

65 However, in the case at hand, the conditions laid down in Article 10(1) of Regulation No 575/2013 do not apply under that regulation for the purpose of assessing the possibility of waiving compliance with the requirements on an individual basis; they apply on account of the reference made in Article 2(21)(c) of the SSM Framework Regulation for the purpose of determining whether a supervised group exists.

66 Furthermore, the possible recognition of the existence of a supervised group within the meaning of Article 2(21)(c) of the SSM Framework Regulation does not entail the grant of the waiver provided for in Article 10(1) of Regulation No 575/2013 to the group's constituent credit institutions, since it is always open to a competent authority to refuse an individual waiver even though the conditions laid down in Article 10(1) of Regulation No 575/2013 are satisfied.

67 Fulfilment of the conditions laid down in Article 10(1) of Regulation No 575/2013 has different consequences depending on whether Article 2(21)(c) of the SSM Framework Regulation or only Article 10(1) of Regulation No 575/2013 is in issue. In the first situation, it signifies the supervision of the group by the ECB, provided that the conditions laid down in Article 40 of the SSM Framework Regulation are also satisfied. In the second situation, the waiver on an individual basis of compliance with prudential requirements within the group is not automatic, but is a discretionary power open to the competent authority.

68 Thus, the ECB is entitled, first, to infer from the fact that the conditions laid down in Article 10(1) of Regulation No 575/2013 are met that Article 2(21) of the SSM Framework Regulation applies and, secondly, to supervise the entire group, while refusing to waive, as the competent authority under Regulation No 575/2013, compliance by the group entities with prudential requirements on an individual basis.

69 It follows from the foregoing that only the aims of Article 2(21)(c) of the SSM Framework Regulation are relevant to its interpretation, notwithstanding the reference therein to Article 10(1) of the SSM Framework Regulation.

70 As regards, in the second place, the contextual interpretation of Article 2(21)(c) of the SSM Framework Regulation, it should be observed that, in its opinion, the Board of Review repeatedly referred to the content of the ECBS guidelines in order to find that the conditions laid down in Article 10(1) of

Regulation No 575/2013 were satisfied. It is therefore necessary to examine whether those guidelines are an aspect of the legal context of which Article 2(21)(c) of the SSM Framework Regulation forms part, which might be relevant for the purpose of interpreting the conditions laid down in Article 10(1) of Regulation No 575/2013, to which the former refers.

71 It should be noted that the ECBS is the predecessor of the European Banking Authority (EBA) and the ECBS guidelines concern the interpretation of Article 3 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ 2006 L 177, p. 1), as amended by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (OJ 2009 L 302, p. 97). Article 3 of Directive 2006/48 stated that 'one or more credit institutions situated in the same Member State and which [we]re permanently affiliated to a central body which supervise[d] them and which [wa]s established in the same Member State, [could] be exempted from the requirements of … if national law provides that …'. It went on to list three conditions, which now appear in Article 10(1) of Regulation No 575/2013.

72 It should also be noted that the ECBS guidelines were adopted in response to a request from the legislature to that effect, set out in recital 2 of Directive 2009/111. The ECBS was asked to 'provide for guidelines in order to enhance the convergence of supervisory practices [as regards Article 3 of Directive 2006/48]'.

73 Therefore, given the similarity in wording of the conditions laid down in Article 3 of Directive 2006/48 and Article 10(1) of Regulation No 575/2013 and the circumstances surrounding the adoption of the ECBS guidelines, namely the fact that they were adopted by the competent body at that time and at the request of the legislature, those guidelines may be taken into account under the legal context of which Article 2(21)(c) of the SSM Framework Regulation forms part.

74 However, the interpretation of the relevant legislation by an administrative authority cannot bind the EU Courts which have exclusive jurisdiction to interpret EU law, under Article 19 TEU.

75 It should also be noted that that interpretation was provided by the ECBS having regard only to the aims of Article 3 of Directive 2006/48, which were similar to those of Article 10 of Regulation No 575/2013, namely to permit exemptions from compliance with prudential requirements on an individual basis provided that those requirements are met within the group.

76 Nonetheless, for the reasons set out in paragraphs 65 to 69 above, it is not these aims which are relevant; the relevant aims are those of Article 2(21)(c) of the SSM Framework Regulation, which could not be taken into consideration when the ECBS guidelines were adopted.

77 Therefore, although the ECBS guidelines are an aspect which might be taken into account by the EU Courts, they cannot be accorded any particular weight.

(b) First plea in law alleging that the CNCM is not a credit institution

78 The applicant submits that it is apparent from both the Basic Regulation and the SSM Framework Regulation as well as Regulation No 575/2013 that the prudential supervision on a consolidated basis of institutions affiliated to a central body is possible only if that central body is a credit institution, which the CNCM is not.

79 The ECB, supported by the Commission, contends that this plea should be rejected.

80 It must be noted to begin with that although the applicant observes in its pleadings that Article 127(6) TFEU and the Basic Regulation relate to the prudential supervision of credit institutions, it raises no plea of illegality in respect of Article 2(21)(c) of the SSM Framework Regulation claiming that if that provision had to be interpreted as meaning that the central body need not be a credit institution, it would be contrary to Article 127(6) TFEU or to the Basic Regulation.

81 Accordingly, it is sufficient, in the context of this plea, to determine whether the concept of 'central body' within the meaning of Article 2(21)(c) of the SSM Framework Regulation must be construed as meaning a body with the status of credit institution.

82 In so far as Article 2(21)(c) of the SSM Framework Regulation refers to the conditions laid down in Article 10(1) of Regulation No 575/2013, it is necessary to examine whether a requirement for credit institution status derives either directly from Article 2(21)(c) of the SSM Framework Regulation or indirectly from those conditions.

(1) Whether Article 2(21)(c) of the SSM Framework Regulation requires the central body to be a credit institution

83 In essence, the applicant submits that in so far as Article 127(6) TFEU and the Basic Regulation relate to the prudential supervision of credit institutions, Article 2(21)(c) of the SSM Framework Regulation should be interpreted as meaning that central bodies must have credit institution status. It also maintains that the impossibility for consolidated prudential supervision to be exercised through a central body that does not have such status is confirmed by the fact that the ECB has no supervisory or penalty powers in that scenario.

84 In accordance with the case-law cited in paragraph 54 above, a literal, teleological and contextual interpretation of Article 2(21)(c) of the SSM Framework Regulation should be applied.

85 As regards, in the first place, the literal interpretation of Article 2(21)(c) of the SSM Framework Regulation, it must be noted that the wording of that provision does not mention that the central body must have credit institution status, unlike Article 2(21)(a) of that regulation, which refers expressly to the prudential supervision of a group whose parent undertaking has the status of credit institution.

86 As regards, in the second place, the teleological interpretation of Article 2(21)(c) of the SSM Framework Regulation, it is necessary to take into account the aims set out in paragraph 63 above.

87 Without it being necessary to go into the details of the examination of the conditions laid down in Article 10(1) of Regulation No 575/2013, which comes under the second plea, it is sufficient, at this stage, to point out that if those conditions were met, the logical inference would be that there is sufficient proximity between the institutions affiliated to a central body for the existence of a group to be established. Specifically, the condition relating to joint and several liability in Article 10(1)(a) of Regulation No 575/2013 may, if a credit institution were to fail, have the effect of putting the other entities affiliated to the same central body at risk. It is therefore consistent with the aims of the Basic Regulation and the SSM Framework Regulation for a group to be classified as a 'supervised group' within the meaning of Article 2(21)(c) of the SSM Framework Regulation irrespective of whether or not the group's central body has the status of credit institution.

88 Furthermore, if the applicant's analysis were to be accepted, the different institutions affiliated to a central body that does not have credit institution status but satisfies the conditions laid down in Article 10(1) of Regulation No 575/2013 would, depending on their individual significance, fall under

the sole supervision of the ECB or the direct supervision of the national competent authorities, within the framework of the SSM, which would result in the fragmentation of prudential supervision contrary to the aims of both the Basic Regulation and the SSM Framework Regulation.

89 As regards, in the third place, the contextual interpretation of Article 2(21)(c) of the SSM Framework Regulation, it is true, as the applicant essentially points out, that the Basic Regulation confers a number of powers on the ECB, including the possibility of imposing administrative penalties, which constitute the corollary of the supervisory task entrusted to it, and that the relevant provisions of the Basic Regulation do not provide for the exercise of such powers in relation to the central bodies referred to in Article 2(21)(c) of the SSM Framework Regulation.

90 Indeed, Articles 10 (requests for information), 11 (general investigations) and 16 (supervisory powers) of the Basic Regulation all refer to the exercise of the ECB's powers in relation to credit institutions, financial holding companies, mixed-activity holding companies and mixed financial holding companies. Furthermore, Article 18 of that regulation mentions the possibility of imposing penalties on credit institutions, financial holding companies and mixed financial holding companies.

91 However, it should be borne in mind that prudential supervision on a consolidated basis of a group is in addition to, not a replacement for, prudential supervision on an individual basis of the credit institutions making up that group, as pointed out in the second sentence of recital 38 of the Basic Regulation.

92 Accordingly, the fact that the ECB cannot exercise such powers in relation to a central body that does not have the status of credit institution is not an impediment to the conduct of appropriate prudential supervision, since the ECB is able to use its powers in relation to the entities affiliated to that central body.

93 It follows from the above that Article 2(21)(c) of the SSM Framework Regulation cannot be interpreted as meaning, in itself, that a central body must have the status of credit institution.

(2) Whether Article 10 of Regulation No 575/2013 requires the central body to be a credit institution

94 The applicant argues that in order to comply with Regulation No 575/2013, the central body must have credit institution status. It refers, in that regard, to Articles 11(4) and 10(1)(b) of Regulation No 575/2013.

95 In the first place, Article 11(4) of Regulation No 575/2013 provides that 'where Article 10 is applied, the central body referred to in that Article shall comply with the requirements of Parts Two to Eight on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions'. Parts Two to Eight concern, respectively, own funds, capital requirements, large exposures, exposures to transferred credit risk, liquidity, leverage and disclosure by institutions. In essence, the applicant submits that those requirements can only be satisfied by a credit institution.

96 It is clear that such an argument cannot be accepted, since it makes compliance with Article 11(4) of Regulation No 575/2013 a condition for the application of Article 10 of that regulation, which is at odds with both the literal interpretation of Article 10 and the scheme of those two provisions.

97 First, there is no reference to Article 11(4) of Regulation No 575/2013 in the body of Article 10 thereof.

98 Secondly, the logic of the relationship between those provisions requires the implementation of Article 11(4) of Regulation No 575/2013 to be a consequence of, not a condition for, the application of Article 10 of that regulation. Where the competent authority agrees, on the basis of Article 10 of Regulation No 575/2013, to exempt entities affiliated to a central body from compliance with prudential requirements on an individual basis, Article 11(4) of Regulation No 575/2013 then applies, by requiring the central body to comply with the prudential requirements on the basis of the consolidated situation of the whole it constitutes with the affiliated institutions.

99 It should be noted that what is in issue here is not whether a decision to exempt institutions affiliated to a central body from compliance with prudential requirements on an individual basis is well founded, but whether a group exists within the meaning of Article 2(21)(c) of the SSM Framework Regulation. That provision refers only to Article 10 of Regulation No 575/2013, not to Article 11(4) thereof.

100 Consequently, although the potential difficulty for a central body to comply with the requirements of Article 11(4) of Regulation No 575/2013 may be a relevant consideration when it is a question of the competent authority granting an individual waiver — which is optional even if the conditions laid down in Article 10 of Regulation No 575/2013 are met — it has no effect on the exercise by the ECB of its prudential supervision of the whole group.

101 In the second place, the condition set out in Article 10(1)(b) of Regulation No 575/2013 requires that 'the solvency and liquidity of the central body and of all the affiliated institutions [b]e monitored as a whole on the basis of consolidated accounts of these institutions'.

102 The question whether the CNCM satisfies that condition is addressed in the second part of the second plea. At this juncture, the only issue is whether compliance with Article 10(1)(b) of Regulation No 575/2013 necessarily means that the central body must have the status of credit institution.

103 In order for that condition to be satisfied, two criteria must be met. The first relates to the existence of consolidated accounts for the group. The second requires the solvency and liquidity of all entities making up the group to be monitored on the basis of those accounts.

104 In that respect, the position set out in paragraph 24 of the ECBS guidelines — according to which the requirement for the solvency and liquidity of all entities making up the group to be monitored on the basis of consolidated accounts should be viewed from a prudential supervisory perspective — must be endorsed, since Article 2(21)(c) of the SSM Framework Regulation precisely concerns the definition of supervised groups.

105 Likewise, the ECBS was also right to point out in its guidelines that it was not necessary for the central body to have credit institution status, since fulfilment of the two criteria expressly set out in Article 10(1)(b) of Regulation No 575/2013 was sufficient for the group's compliance with prudential requirements to be supervised.

106 The existence of consolidated accounts provides an overall picture of the financial situation of the grouping made up of the central body and its affiliated institutions, on the basis of which the competent authority may satisfy itself that that grouping's liquidity and solvency comply with prudential requirements, irrespective of whether or not the central body has the status of credit institution.

107 It must therefore be concluded that neither Article 10(1)(b) nor Article 11(4) of Regulation No 575/2013 requires a central body to have the status of credit institution in order for Article 2(21)(c) of the SSM Framework Regulation to apply.

108 In the light of the foregoing, the first plea in law must be rejected.

(c) Second plea in law alleging that there is no supervised group for the purpose of Article 2(21)(c) of the SSM Framework Regulation and Article 10 of Regulation No 575/2013

109 By its second plea, the applicant claims that the conditions laid down in Article 10(1) of Regulation No 575/2013, to which Article 2(21)(c) of the SSM Framework Regulation refers, are not satisfied by Crédit Mutuel, which cannot, therefore, be treated as a 'group' within the meaning of that provision. This plea can be divided into three parts, alleging infringement of the conditions laid down in Article 10(1)(a), Article 10(1)(b) and Article 10(1)(c) of Regulation No 575/2013, respectively.

(1) First part of the second plea in law alleging infringement of Article 10(1)(a) of Regulation No 575/2013

110 As a preliminary point, the applicant states that it is apparent from Article 6 of Regulation No 575/2013 that, as a rule, credit institutions are subject to prudential requirements on an individual basis and that the possibility afforded by Article 10 of that regulation is exceptional, applicable only in circumstances where the group may be regarded as a single entity and where the application of prudential requirements on an individual basis does not provide any added value.

111 The applicant submits that the CNCM neither holds nor is entitled to hold capital enabling it to guarantee or be jointly and severally liable for the commitments of its affiliates. Therefore, the ECB was wrong to find that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 was satisfied.

112 In the first place, the applicant submits, in essence, that the concepts of joint and several liability and guarantee can be interpreted only in the light of the rules of French law governing the relationship between the CNCM and its affiliates. First, the CNCM and its affiliates are not jointly and severally liable, within the meaning of Article 1200 of the code civil français (French Civil Code), towards their creditors. Secondly, the CNCM does not act as surety for commitments entered into by its affiliates within the meaning of Article 2288 of the French Civil Code nor does it provide independent guarantees within the meaning of Article 2321 thereof. Thirdly, Article L.511-31 of the CMF cannot be interpreted as meaning that the CNCM is jointly and severally liable with its affiliates or that it stands as guarantor for them. Fourthly, the same applies as regards the special provisions applicable to the CNCM set out in Article L.512-55 et seq. of the CMF. The applicant also states that there is no intra-group financial support mechanism of the kind that may be adopted under Article L.613-46 et seq. of the CMF.

113 In the second place, the applicant argues that the CNCM has no power to transfer capital between affiliates. Firstly, Article L.511-31 of the CMF does not contain any provisions allowing central bodies to perform such transfers and the recent case-law of the Conseil constitutionnel (Constitutional Council, France) makes mandatory transfers without the agreement of the affiliates concerned impossible.

114 In the third place, the applicant submits that general decision No 1-1992 of the CNCM of 10 March 1992 on joint and several liability between credit union branches and agricultural credit union branches does not state that the commitments of the central body and its affiliates are of a joint and several nature or are guaranteed by either of them. It recalls that the contested decision itself drew attention to the fact that the joint and several liability mechanism within Crédit Mutuel lacked definition. It also considers that the existence of a fund of 2% of deposits within the CCCM does not lead to the conclusion that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 is satisfied.

115 The ECB, supported by the Commission, contends that the first part of the second plea should be rejected.

116 Under that first condition, it is necessary to determine whether the commitments of the CNCM and its affiliated institutions are joint and several liabilities or whether the commitments of its affiliated institutions are entirely guaranteed by the CNCM.

117 As regards, in the first place, the meaning of Article 10(1)(a) of Regulation No 575/2013, the applicant's argument that the terms 'joint and several liabilities' and 'commitments … guaranteed' should be interpreted in the light of the relevant articles of the French Civil Code must be rejected at the outset.

118 The Court has consistently held that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (see judgment of 5 December 2013, *Vapenik*, C-508/12, EU:C:2013:790, paragraph 23 and the case-law cited).

119 Since Regulation No 575/2013 does not define the concepts of 'joint and several liability' and 'guarantee' by reference to the laws of the Member States, they must be regarded as autonomous concepts of EU law.

120 In its opinion, the Board of Review referred to the interpretation set out in the ECBS guidelines.

121 Paragraph 19 of the ECBS guidelines rightly states that the condition laid down in Article 3(1)(a) of Directive 2006/48, the wording of which is similar to Article 10(1)(a) of Regulation No 575/2013, envisages different situations, namely a guarantee by the central body in favour of its affiliates, a two-way guarantee by the central body and its affiliates, or a system of cross-guarantees within the group under which the affiliates are also guarantors for each other.

122 In paragraph 20 of its guidelines, the ECBS essentially submits that, for there to be a guarantee or joint and several liability, 'the applicable arrangements … should ensure that there are no legal or practical impediments to the prompt transfer of own funds and liquidity within the Group to ensure that the obligations to creditors of the central body and its affiliates can be fulfilled' and 'the Group as a whole must be able to grant the support necessary under its applicable arrangements from funds readily available'.

123 It is clear that the second part of the ECBS's interpretation cannot be fully endorsed, at least in circumstances where Article 10(1)(a) of Regulation No 575/2013 applies by reason of the reference made by Article 2(21)(c) of the SSM Framework Regulation.

124 To follow the approach of the ECBS would be tantamount to interpreting the condition laid down in Article 10(1)(a) of Regulation No 575/2013 in the light of the condition relating to transfers of funds between a parent undertaking and its subsidiaries so that the latter can qualify for an exemption from compliance with prudential requirements on an individual basis. That condition was formerly set out in Article 69 of Directive 2006/48 and now appears in Article 7(1)(a) of Regulation No 575/2013, which refers to there being 'no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by [the] parent undertaking'.

125 However, those two provisions — Article 7(1)(a) and Article 10(1)(a) of Regulation No 575/2013 — are worded differently, which militates against an interpretation extending the terms used by the legislature for one type of situation, namely the relationship between a parent undertaking and its subsidiaries, to another type, namely the relationship between a central body and its affiliated institutions.

126 Furthermore, such an interpretation would be inconsistent with the aims of Article 2(21)(c) of the SSM Framework Regulation.

127 As pointed out in paragraphs 58 to 63 above, the concept of group in the context of the Basic Regulation and SSM Framework Regulation aims, in particular, to enable the ECB to identify the risks likely to affect a credit institution which derive not from the institution itself, but from the group of which it forms part. However, where there is an obligation to transfer capital and liquidity within the group to ensure that the obligations towards creditors are fulfilled — whether or not the transfer is performed in the manner outlined by the ECBS — the risk affecting the affiliated credit institution is liable to spread to the entire group of which it forms part, in consequence of which the ECB is entitled to exercise prudential supervision over the grouping made up of the central body and its affiliates.

128 For the same reason, the applicant's argument that, in the scheme of Regulation No 575/2013, the benefit of Article 10 of that regulation should be conferred only in circumstances where the application of prudential requirements on an individual basis does not provide any added value is irrelevant, since the only point in issue in the present case is the existence of a supervised group within the meaning of Article 2(21)(c) of the SSM Framework Regulation and the fact that, for the reasons set out in paragraphs 66 to 68 above, the finding that such a group exists does not automatically entail the grant of the waiver provided for in Article 10(1) of Regulation No 575/2013 to its constituent entities.

129 It is therefore consistent with the aim of Article 2(21)(c) of the SSM Framework Regulation, as well as the wording of Article 10(1)(a) of Regulation No 575/2013, to conclude that the condition laid down in the latter provision is met where there is an obligation to transfer capital and liquidity within the group to ensure that the obligations towards creditors are fulfilled.

130 As regards, in the second place, the application of the first condition to the case at hand, it should be recalled that the Board of Review put forward a number of reasons explaining why it had been met. Those reasons concern, first, the wording of Article L.511-31 of the CMF; secondly, the unconditional obligation on the CNCM to intervene in favour of distressed branches flowing from decision No 1-1992 of the CNCM of 10 March 1992 (see paragraph 114 above); thirdly, the existence of resources of the CNCM and the CCCM capable of being made available for use; fourthly, the articles of association of the CCCM; and, fifthly, the fact that exceptional assistance was provided in the past to distressed entities.

131 As regards the first reason put forward by the Board of Review, namely the wording of Article L.511-31 of the CMF, it is settled case-law that the scope of national laws, regulations or administrative provisions must be assessed in the light of the interpretation given to them by national courts (see judgment of 16 September 2015, *Commission* v *Slovakia*, C-433/13, EU:C:2015:602, paragraph 81 and the case-law cited). However, in the absence of decisions by the competent national courts, it is for the Court to rule on the scope of those provisions.

132 The wording of Article L.511-31 of the CMF shows only the existence of an obligation for central bodies to take 'all necessary measures, particularly to ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole'.

133 It is clear that the wording of Article L.511-31 of the CMF does not, in itself, lead to the conclusion that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 is met, since the reference to the taking of 'necessary measures' to 'ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole' are too general to permit the inference that an obligation exists to transfer capital and liquidity within the group to ensure that the obligations towards creditors are fulfilled.

134 It is apparent, however, from reading the decision of 10 March 1992 that a joint and several liability mechanism exists for the benefit of distressed branches, namely those (i) that are unable to comply with banking regulations; (ii) that cannot cope with an exceptional loss; (iii) with negative equity; and (iv) whose working capital is negative (Article 2). The decision states that intervention may take the form of interest-bearing advances possibly accompanied by subsidies covering the interest on the advances, grants, ordinary or equity loans and guarantees for no consideration in respect of all or part of their commitments (Article 3). It is also clear that although this joint and several liability applies in principle at regional level, it is open to a branch to call for joint and several liability at national level (Article 4). In that event, the CNCM is required to intervene in favour of a distressed branch (Article 5).

135 That evidence demonstrates the existence of an obligation to transfer capital and liquidity within Crédit Mutuel intended to ensure that the obligations towards creditors are fulfilled.

136 Consequently, the ECB was entitled to find, based solely on the existence of that joint and several liability mechanism within the Crédit Mutuel group, that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 was satisfied.

137 It is settled case-law that where some of the grounds in a decision on their own provide a sufficient legal basis for the decision, any errors in the other grounds of the decision have no effect on its operative part (see, to that effect and by analogy, judgments of 12 July 2001, *Commission and France* v *TF1*, C-302/99 P and C-308/99 P, EU:C:2001:408, paragraph 27, and of 12 December 2006, *SELEX Sistemi Integrati* v *Commission*, T-155/04, EU:T:2006:387, paragraph 47). In accordance with that case-law, the Court considers that it is not necessary to examine the merits of the other grounds put forward in the opinion of the Board of Review.

138 That conclusion is not invalidated by the applicant's arguments. That is the case, in particular, as regards the reference made to decision No 2014-449 QPC of 6 February 2015 of the Conseil constitutionnel (Constitutional Council), since that decision exclusively concerned the compatibility with the French Constitution of a provision of the CMF allowing the ACPR to order a portfolio transfer on its own initiative to the detriment of an insurance company, which therefore renders it irrelevant to the question of a joint and several liability mechanism between affiliated institutions forming part of the same banking group.

139 In view of the foregoing, the first part of the second plea must be rejected.

(2) Second part of the second plea in law alleging infringement of Article 10(1)(b) of Regulation No 575/2013

140 The applicant claims that the ECB was wrong to find that the condition laid down in Article 10(1)(b) of Regulation No 575/2013 was satisfied.

141 In the first place, the concepts of solvency and liquidity are meaningful only in relation to credit institutions, while the CNCM is an association.

142 In the second place, it is at the level of the groups affiliated to the CNCM that solvency and liquidity are assessed by lenders, rating agencies and regulators. The accounts published by the CNCM constitute the simple aggregation of different groups and are artificial in nature as there is no economic unity between them.

143 In the third place, the Board of Review wrongly took the view that that condition was satisfied on the basis of Article L.511-20 of the CMF, under which 'financial institutions and companies affiliated to a network and the central body within the meaning of Article L.511-31 shall be deemed to form part of a

single group for the purpose of this code'. The applicant contends that the classification as a 'group' is valid only in relation to the application of the CMF and is irrelevant to the question whether the conditions laid down in Article 10(1)(b) of Regulation No 575/2013 are satisfied. In the same vein, it claims that neither Article L.511-31 of the CMF nor Article 25 of the articles of association of the CNCM demonstrates that the second condition is met. The same is true of Article 2 of those articles of association and other provisions of the CMF to which the ECB refers.

144 The ECB and the Commission contend that the second part of the second plea should be rejected.

145 Article 10(1)(b) of Regulation No 575/2013 provides that 'the solvency and liquidity of the central body and of all the affiliated institutions [must be] monitored as a whole on the basis of consolidated accounts of these institutions'.

146 For the reasons set out in paragraphs 103 and 104 above, that condition must be interpreted as requiring both criteria to be met. The first relates to the existence of consolidated accounts for the group. The second requires the solvency and liquidity of all entities making up the group to be subject to prudential supervision on the basis of those accounts.

147 In its opinion, the Board of Review found that condition to be satisfied both in relation to the duties of the CNCM under Article L.511-31 of the CMF as regards the liquidity and solvency of its affiliated institutions and of the network as a whole, and in relation to the wording of Article 25 of the articles of association of the CNCM.

148 In the Court's view, that conclusion should be endorsed.

149 The first criterion must be regarded as satisfied since Article 25 of the articles of association of the CNCM provides that its board of directors 'shall adopt the annual accounts of the [CNCM], the national consolidated accounts and shall draw up the management reports for those accounts'.

150 As regards the second criterion, it should be noted that under Article L.511-31 of the CMF, the central bodies 'shall take all necessary measures, particularly to ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole' and 'shall represent the credit institutions and finance companies affiliated to them … before the [ACPR]'. The logical consequence is that the CNCM is empowered by the CMF to represent Crédit Mutuel before the authorities responsible for the prudential supervision of compliance with the solvency and liquidity requirements. The second criterion can therefore also be regarded as satisfied.

151 The applicant's argument that that condition cannot be met because the CNCM is not a credit institution must be rejected for the reasons set out in paragraph 105 above.

152 In the light of the foregoing, the second part of the second plea must be rejected.

(3) Third part of the second plea in law alleging infringement of Article 10(1)(c) of Regulation No 575/2013

153 The applicant claims that the ECB was wrong to find that the condition laid down in Article 10(1)(c) of Regulation No 575/2013 was satisfied.

154 The applicant argues that the CNCM is not empowered to issue instructions to its affiliates within the meaning of that provision in the key areas of activity of a credit institution, in the light of the very broad wording used in Article L.511-31 of the CMF. For such a power to exist, the legislature would have had to make express provision to that effect, as it did in relation to the central body of the BPCE group under Article L.512-107 of the CMF. A comparison with Article L.512-56 of the CMF applicable

to Crédit Mutuel shows that the CNCM has no such power, since the reference to the taking of 'necessary measures' by the CNCM does not mean that it is able to issue instructions. Nor was the power to issue instructions conferred on the CNCM by contractual means, either. As regards the CNCM's penalty powers under Article R.512-24 of the CMF, the applicant submits that it is not possible to infer from those powers the existence of a power to issue instructions to the management of its affiliated institutions. As for the penalty powers contemplated in the articles of association of the CNCM, the applicant asserts that these are illegal.

155 The ECB, supported by the Commission, contends that the third part of the second plea should be rejected.

156 In order to determine whether the ECB was right to find that the condition laid down in Article 10(1)(c) of Regulation No 575/2013 had been satisfied, it is necessary to determine whether the management of the CNCM is empowered to issue instructions to the management of its affiliated institutions.

157 In its opinion, the Board of Review referred to the CNCM's right under Article L.511-31 of the CMF to take 'all necessary measures, particularly to ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole' as well as its duty, imposed on it by the same provision, to ensure 'the application of the laws and regulations specific to those institutions and companies and [to] exercise administrative, technical and financial control over their organisation and management'. It also drew attention to the obligation on Crédit Mutuel's branches to 'comply with the articles of association, internal regulations, instructions and decisions of the [CNCM] and the regional federation to which they are to be affiliated' under the second paragraph of Article R.512-20 of the CMF. Lastly, it pointed out that the CNCM had the power to impose penalties. The Board of Review referred to Article R.512-24 of the CMF, which allows the CNCM to impose on a branch in breach of the regulations in force a penalty consisting of '[a] warning[, a] reprimand [or] removal from the list of credit union branches', and to Articles 10 and 25 of the articles of association of the CNCM, under which the CNCM may expel a federation, pass a motion of no confidence against the chairman of a federation or credit union branch, or revoke the approval of a managing director.

158 Three things are clear from the above provisions: first, the CNCM is duty-bound to ensure, in particular, the liquidity and solvency of the group and its constituent entities, as well as compliance with legislative and regulatory requirements; secondly, the affiliated institutions are under an obligation to comply with the instructions of the CNCM; and thirdly, the CNCM has the power to impose penalties on those entities. The condition laid down in Article 10(1)(c) of Regulation No 575/2013 must therefore be regarded as satisfied.

159 That conclusion is not invalidated by the applicant's argument that the power to issue instructions flowing from the articles of association of the CNCM is unlawful, since only the CMF is able to confer such a power on it. Suffice it to note that, as the Conseil d'État (Council of State, France) pointed out in paragraph 5 of its judgment of 13 December 2016, which the ECB invoked at the hearing and on which the applicant was able to submit observations, the second paragraph of Article R.512-20 of the CMF provides that credit union branches 'must undertake to comply with the articles of association, internal regulations, instructions and decisions of the [CNCM]'. In addition, in paragraph 13 of its judgment, the Conseil d'État (Council of State) recalled that '[the applicant] [was] required to comply with the requests of the [CNCM] acting within the framework of its powers as a central body'.

160 In the light of the foregoing, the third part must be rejected and, in consequence, the second plea must be dismissed in its entirety.

2. Third plea in law concerning the lawfulness of paragraph 3 of the contested decision

161 In its third plea, the applicant claims that the contested decision, in so far as it imposes additional capital on it, is vitiated by an error of law and errors of assessment and is disproportionate.

162 The ECB contends that the present plea should be rejected.

163 As a preliminary point, it should be observed that it is apparent from Article 4(3) of the Basic Regulation that, when carrying out its prudential supervision tasks, the ECB is the competent authority within the meaning of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48 and 2006/49/EC (OJ 2013 L 176, p. 338), and of Regulation No 575/2013.

164 Under Article 97(1)(a) of Directive 2013/36, 'taking into account the technical criteria set out in Article 98, the competent authorities shall review the arrangements, strategies, processes and mechanisms implemented by the institutions to comply with this Directive and Regulation … No 575/2013 and evaluate … risks to which the institutions are or might be exposed'.

165 The minimum CET 1 capital requirements which credit institutions are required to comply with are set out in Article 92(1)(a) of Regulation No 575/2013, which provides that 'subject to Articles 93 and 94, institutions shall at all times satisfy the following own funds requirements: … a [CET 1] capital ratio of 4.5%'.

166 This is in addition to the obligation appearing in Article 129(1) of Directive 2013/36, headed 'Requirement to maintain a capital conservation buffer', which provides:

'Member States shall require institutions to maintain in addition to the [CET 1] capital maintained to meet the own funds requirement imposed by Article 92 of Regulation … No 575/2013, a capital conservation buffer of [CET 1] capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92(3) of that Regulation on an individual and consolidated basis, as applicable in accordance with Part One, Title II, of that Regulation.'

167 Furthermore, it is apparent from a combined reading of Article 16(1)(c) and (2)(a) of the Basic Regulation that, if the prudential examination conducted by the ECB shows that a credit institution's capital and liquidity do not ensure sound management and coverage of its risks, the ECB is entitled to require the credit institution to maintain a level of capital exceeding those minimum requirements.

168 In paragraph 3 of the contested decision, the ECB set the CET 1 capital requirements of the applicant at 10.75%. In order to justify that level of capital, the ECB referred, in particular, to the additional risks posed by a possible departure from the Crédit Mutuel group and found that those risks required the imposition of additional capital under Article 16(1)(c) and (2)(a) of the Basic Regulation.

169 In that regard, the ECB drew attention to the current infighting within the CNCM and observed that the applicant's departure from the Crédit Mutuel group was conceivable as a result of that discord.

170 In essence, the ECB took the view that a possible departure could have three types of consequences for the applicant. First, it could affect its business model. In that connection, the ECB referred to an increase in the competitive pressure the applicant would face from Crédit Mutuel group entities and to concerns as to the possibility of using the Crédit Mutuel trade mark in the event of its departure. In the second place, the applicant's departure could affect the calculation of its minimum CET 1 capital requirements, since it would no longer be able to use the advanced approach and would have to use the standardised approach, entailing an increase in its capital requirements. In the third place,

such a departure might also have an impact on the applicant's liquidity risk profile, since it would lose the benefit of the joint and several liability mechanism within the Crédit Mutuel group. That could affect its external ratings and, therefore, its refinancing costs.

171 This plea may be divided into three parts alleging, first, error of law deriving from the fact that the ECB took account of an eventuality which the applicant considers to be unlikely, namely its departure from the Crédit Mutuel group; secondly, that the imposition of additional capital on account of that unlikely eventuality was wrong and disproportionate; and, thirdly, that the imposition of additional capital amounts to a 'covert penalty'.

(a) First part of the third plea in law alleging that the ECB erred in taking account of the applicant's possible departure from the Crédit Mutuel group

172 The applicant complains that the ECB based its decision on the possibility of the former leaving the Crédit Mutuel group and submits, in essence, that such an eventuality is so implausible that its taking into account vitiates the contested decision by an error of law.

173 It observes that its departure from the Crédit Mutuel group would necessitate an amendment to the legislative provisions of the CMF, something which neither the French Government nor the ECB itself envisages. On the contrary, the ECB — both in its letter of 10 November 2014 and in the contested decision — argues in favour of a reform and a stronger role for the CNCM. Accordingly, the applicant's willingness to change the structure of the Crédit Mutuel group to a bipolar structure, the opposite ends of which would have their own central body, cannot in itself, without the Government's support for such a reform, justify altering its risk profile.

174 The ECB contends that the first part of the third plea should be rejected.

175 In so far as the applicant claims that the ECB erred in law by taking account of its possible departure from the Crédit Mutuel group, it should be noted that it is apparent from the wording of Article 97(1)(a) of Directive 2013/36 that the review to be carried out by the ECB relates to the risks to which institutions 'are or might be exposed', which necessarily entails the possibility of taking into account future events capable of altering their risk profile. Therefore, by basing its decision on the possible occurrence of a future event, the ECB did not commit any error of law.

176 By its argument complaining that the ECB took account of the possibility of such a departure even though it was not sufficiently likely, what the applicant really claims is that the ECB committed an error of assessment.

177 It is settled case-law that, in the case of complex assessments, the EU authorities enjoy, in some areas of EU law, a broad discretion, so that review by the EU judicature of those assessments must necessarily be confined to verifying whether the rules on procedure and on the statement of reasons have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of assessment or misuse of powers (see judgment of 2 September 2010, *Commission* v *Deutsche Post*, C-399/08 P, EU:C:2010:481, paragraph 97 and the case-law cited).

178 The exercise of that broad discretion is not, however, excluded from review by the Court. Thus, not only must the EU Courts establish whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (see, to that effect, judgments of 22 November 2007, *Spain* v *Lenzing*, C-525/04 P, EU:C:2007:698, paragraph 57, and of 6 November 2008, *Netherlands* v *Commission*, C-405/07 P, EU:C:2008:613, paragraph 55).

179 Likewise, where an EU authority has a broad discretion, respect for the rights guaranteed by the legal order of the European Union in administrative procedures is of even more fundamental importance. Those guarantees include, in particular, the duty of the competent institution to provide adequate reasons for its decisions. Only in this way can the EU judicature verify whether the factual and legal elements upon which the exercise of the discretion depends were present (see, to that effect, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 9 September 2010, *Evropaïki Dynamiki* v *Commission*, T-387/08, not published, EU:T:2010:377, paragraph 31).

180 It should be noted that the ECB enjoys such a broad discretion in the present case, given the complexity presented by the assessment of the level of a credit institution's CET 1 capital requirements in the light of its risk profile and events likely to have an effect on that profile.

181 It is necessary, therefore, to verify whether the ECB, by finding that the applicant's departure from the Crédit Mutuel group was a possibility, committed a manifest error of assessment.

182 The main argument put forward by the applicant to dispute the likelihood of such a departure relates to the necessary intervention of the French Government by means of an amendment to the CMF, which the Government does not support.

183 Admittedly, the applicant is right to point out that it is apparent from a combined reading of Articles L.511-30 and L.511-31 of the CMF that it must be affiliated to one of the central bodies exhaustively listed in Article L.511-30 thereof. It necessarily follows that the organised departure of the applicant from the Crédit Mutuel group would require an amendment to Article L.511-30 of the CMF in order to include a central body to which the credit institutions making up the applicant would be affiliated.

184 However, the fact remains that the CMF confers power on the CNCM to expel affiliated entities from the Crédit Mutuel group. The fifth paragraph of Article L.511-31 of the CMF enables central bodies to 'apply the penalties provided for in the laws and regulations which are specific to them' while, more explicitly, the sixth paragraph of that article provides for the possible loss of the status of affiliated institution or company, a loss which 'must be notified by the central body to the [ACPR], who shall decide on the approval of the institution or company in question'. Furthermore, it is apparent from Article R.512-24 of the CMF that 'the board of directors of the [CNCM] may impose on a branch in breach of the regulations in force one of the following penalties: … removal from the list of credit union branches'. The detailed rules on the exercise of the penalty power are set out in Article R.512-25 of the CMF. That power is reproduced in Article 25 of the articles of association of the CNCM.

185 In so far as the applicant constitutes a grouping of credit union branches, it is conceivable that the penalty power might be exercised in relation to it.

186 In addition, the applicant does not dispute the existence of infighting within the CNCM, which the ECB mentioned in the contested decision. The applicant itself referred, as early as its letter of 17 July 2015 addressed to the ECB, to the criminal complaint incorporating an application to join the proceedings as party claiming civil damages in respect of unlawful conflict of interest, a complaint it lodged with the prosecutor before the tribunal de grande instance de Paris (Regional Court, Paris, France) concerning an alleged conflict of interest between the CM11-CIC group and the CNCM. Similarly, in the annex to that letter, the applicant drew attention to the proceedings it had brought before the Tribunal de grande instance de Paris (Regional Court, Paris) and EUIPO seeking the cancellation, respectively, of the national trade mark and the European Union trade mark 'Crédit Mutuel' held by the CNCM.

187 In the light of that particularly confrontational situation between the applicant, the CNCM and the CM11-CIC group, the possible departure of the applicant from the Crédit Mutuel group, even in the absence of any amendment to Article L.511-30 of the CMF, does not seem so improbable that taking it into account amounts to a manifest error of assessment by the ECB.

188 The first part of the third plea must therefore be rejected.

(b) Second part of the third plea in law alleging that the ECB's determination that it was necessary for the applicant to hold additional capital was wrong and disproportionate

189 The applicant claims that it was wrong and disproportionate for the ECB to find that the possibility of its departure from the Crédit Mutuel group meant that it had to have additional capital.

190 The ECB contends that this part of the third plea should be rejected.

191 As is apparent from paragraph 170 above, the ECB essentially relied on three broad grounds in order to find that the applicant's departure from the Crédit Mutuel group would have an adverse impact on its risk profile, with the consequence that it would have to hold additional capital.

192 The Court takes the view that it is sufficient to examine the grounds relating to the alteration of the applicant's liquidity risk profile and the impact of a change in the method of calculating its capital.

(1) Merits of the ground relating to the alteration of the applicant's liquidity risk profile in the event of its departure from the Crédit Mutuel group

193 The applicant claims that the ECB was wrong to refer to the impact on its risk profile of the loss of the joint and several liability mechanism specific to the Crédit Mutuel group because no such mechanism exists. Furthermore, it submits that the potential impact of a downgrade in its external ratings on its refinancing costs would only be very limited due to its robust economic situation. It states, in essence, that its commitment ratio has been substantially reduced as has, in consequence, its dependence on the financial markets for refinancing. It therefore asserts that a three-notch downgrade in its rating would have only negligible consequences for its refinancing costs and net income.

194 Suffice it to note that, in contrast to the arguments put forward by the applicant in its pleadings, and as the Court has found in paragraphs 134 and 136 above, a joint and several liability mechanism does exist within the Crédit Mutuel group.

195 Moreover, it is apparent from a report drawn up by a rating agency on the subject of the applicant, produced by the ECB in Annex B.17 to its defence, that the rating given to the applicant was linked to that of the Crédit Mutuel group. In addition, in the same report, the rating agency placed weight on the existence of a joint and several liability mechanism within the Crédit Mutuel group when deciding on the applicant's rating.

196 Accordingly, in the light of the complexity of the determination of the applicant's risk profile, the ECB did not commit a manifest error of assessment in finding that the loss of that mechanism as a result of leaving the Crédit Mutuel group could have an adverse impact on the applicant's external ratings and, consequently, its refinancing costs. In that regard, the opinion expressed by the applicant on the extent of the extra financing costs entailed by a rating downgrade does not demonstrate that the ECB's assessment was manifestly erroneous.

(2) Merits of the ground relating to the impact of a change in the method of calculating the applicant's capital in the event of its departure from the Crédit Mutuel group

197 The applicant claims that the transition from an advanced approach to a standardised approach for the calculation of capital is simply a change of measuring instruments which does alter the actual nature of the operational or credit risks it faces. While recognising that the transition to the standardised approach would lead de facto to an automatic increase in the CET 1 capital requirements, the applicant submits that it is in a position to cope with such an increase. Inasmuch as the contested decision imposes, even at this stage, additional capital on the applicant, it deprives the applicant of the freedom to draw on part of its financial capacity, which causes it serious detriment and is disproportionate.

198 It should be recalled that Regulation No 575/2013 envisages two approaches for calculating the minimum capital requirements of credit institutions: the 'standardised approach', referred to in Articles 111 to 141 of Regulation No 575/2013, whereby risk is measured in a standardised fashion, and the 'advanced approach' or the 'Internal Ratings Based Approach', referred to in Articles 142 to 191 of Regulation No 575/2013, under which the institutions' own models are used. Pursuant to Article 143 of Regulation No 575/2013, the second approach requires permission from the competent authority.

199 In addition, in so far as the applicant refers to the disproportionate nature of the imposition of additional capital as a precautionary measure, it should be noted that, according to Article 5(4) TEU, under the principle of proportionality, the content and form of Union action is not to exceed what is necessary to attain the objectives of the Treaties. The EU institutions are to apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the FEU Treaty.

200 It is settled case-law that, in accordance with the principle of proportionality, which is one of the general principles of EU law, the acts adopted by EU institutions must be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not exceed the limits of what is necessary in order to achieve those objectives; where 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 (see judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 165 and the case-law cited).

201 It must also be borne in mind that the assessment of the proportionality of a measure must be reconciled with compliance with the discretion that may have been conferred on the EU institutions at the time it was adopted (see, to that effect, judgment of 12 December 2006, *Germany* v *Parliament and Council*, C-380/03, EU:C:2006:772, paragraph 145 and the case-law cited).

202 In the contested decision, the ECB essentially followed a threefold line of reasoning. First, if the applicant were to leave the Crédit Mutuel group, it is likely that it would no longer be able to use the advanced approach and would have to apply the standardised approach. Secondly, the application of the standardised approach would entail a downgrade in the rating of its capital. Thirdly, the ECB inferred from the foregoing that the applicant would have to prepare itself for that eventuality by establishing appropriate capital reserves.

203 The Court notes that the applicant does not dispute the merits of the first two aspects of the ECB's reasoning. Furthermore, it is apparent, in particular, from a letter sent by the applicant to the ECB on 27 March 2015 that the applicant itself measured the decrease in its level of CET 1 capital at 2.8%, which would result in a transition from the advanced approach for calculating capital to the standardised approach.

204 In so far as, first, for the reasons set out in paragraphs 183 to 187 above, the ECB was entitled to take into consideration the possibility of the applicant's departure from the Crédit Mutuel group, and, secondly, the parties agree that such a departure could entail a downgrade in the rating of the applicant's level of CET 1 capital, the imposition of additional capital to cover such an eventuality is not the result of a manifest error of assessment nor is it manifestly disproportionate.

205 It follows from the foregoing that both the grounds relating to the alteration of the applicant's liquidity risk profile and those relating to the impact of a change in the method of calculating its capital, in the event of its departure from the Crédit Mutuel group, provide a sufficient legal basis for the imposition of additional capital by the ECB. There is therefore no need to examine the merits of the grounds of the contested decision concerning the impact of the applicant's departure from the Crédit Mutuel group on its business model.

206 The second part of the third plea must therefore be rejected.

(c) Third part of the third plea in law alleging that the imposition of additional capital amounts to a covert penalty

207 The applicant submits that the level of CET 1 capital imposed on it in the contested decision is in the nature of a covert penalty since its objective seems to have been to 'punish' the applicant for having drawn the ECB's attention to the situation within the Crédit Mutuel group.

208 The ECB denies that its determination of the level of the applicant's CET 1 capital is a covert penalty.

209 By means of such an argument, the applicant essentially claims that the contested decision is vitiated by misuse of powers.

210 It should be borne in mind that, in accordance with settled case-law, the concept of misuse of powers refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken for such a purpose (judgments of 13 November 1990, *Fedesa and Others*, C-331/88, EU:C:1990:391, paragraph 24, and of 9 October 2001, *Italy* v *Commission*, C-400/99, EU:C:2001:528, paragraph 38). Furthermore, where more than one aim is pursued, even if the grounds of a decision include, in addition to proper grounds, an improper one, that would not make the decision invalid for misuse of powers, provided that the decision does not cease to pursue the main aim (judgments of 21 December 1954, *Italy* v *High Authority*, 2/54, EU:C:1954:8, p. 54, and of 21 September 2005, *EDP* v *Commission*, T-87/05, EU:T:2005:333, paragraph 87).

211 As stated in paragraph 161 above, the purpose for which the powers referred to in Article 16(2) of the Basic Regulation were conferred on the ECB include the need to correct a situation in which a credit institution's capital and liquidity do not ensure sound management and coverage of its risks.

212 It is apparent from the examination of the first two parts of this plea that the ECB used its powers in a manner consistent with that purpose. Furthermore, the applicant does not put forward any objective, relevant and consistent evidence, in terms of the case-law referred to in paragraph 207 above, to show that its level of capital was determined in such a way as to punish it.

213 In the light of the foregoing, the third part must be rejected and, in consequence, the third plea as a whole as well as the action must be dismissed.

IV. Costs

214 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those of the ECB, in accordance with the form of order sought by the latter.

215 In accordance with Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. The Commission must therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Second Chamber, Extended Composition),

hereby:

1. **Dismisses the action;**

2. **Orders Crédit Mutuel Arkéa to bear its own costs and to pay those incurred by the European Central Bank (ECB);**

3. **Orders the European Commission to bear its own costs.**

Prek Buttigieg Schalin

Berke Costeira

Delivered in open court in Luxembourg on 13 December 2017.

[Signatures]

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