Reports of Cases

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

7 December 2022*

(Economic and monetary policy – Prudential supervision of credit institutions – Article 22 of Directive 2013/36/EU – Opposition of the ECB to the acquisition of qualifying holdings in a credit institution – Starting point of the assessment period – Intervention by the ECB during the initial stage of the procedure – Criteria of financial stability of the proposed acquirer and compliance with prudential requirements – Existence of reasonable grounds for opposing the acquisition on the basis of one or more assessment criteria – Article 106 of the Rules of Procedure – Request for a hearing without a statement of reasons)

In Case T-330/19,

PNB Banka AS, established in Riga (Latvia), represented by O. Behrends, lawyer,

applicant,

v

European Central Bank (ECB), represented by C. Hernández Saseta, F. Bonnard and V. Hümpfner, acting as Agents,

defendant,

supported by

European Commission, represented by D. Triantafyllou, A. Nijenhuis and A. Steiblytė, acting as Agents,

intervener,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed, at the time of the deliberations, of S. Gervasoni (Rapporteur), President, L. Madise, P. Nihoul, R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

gives the following

* Language of the case: English.

Judgment

1 By its action based on Article 263 TFEU, the applicant, PNB Banka AS, seeks annulment of the decision, notified by letter of 21 March 2019, by which the European Central Bank (ECB) decided to oppose the transaction consisting of the acquisition of qualifying holdings in B ('the contested decision').

I. Background to the dispute

2 The applicant was, on the date of the contested decision, a less significant credit institution within the meaning of Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63), established in Latvia. It was therefore placed under the direct prudential supervision of the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission, Latvia; 'the FCMC').

3 On the date on which the action was brought, CR was the applicant's majority shareholder.

4 According to the applicant, in August 2017, CR lodged a complaint with the United Kingdom authorities concerning acts of corruption alleged to have been committed by A, Governor of the Latvijas Banka (Central Bank of Latvia). The alleged acts of corruption consisted of attempts by the Governor to obtain, through his influence over the FCMC, bribes from CR.

5 On 12 December 2017, the applicant, CR and other members of CR's family, the applicant's shareholders, brought arbitration proceedings against the Republic of Latvia before the International Centre for Settlement of Investment Disputes (ICSID), on the basis of the Treaty of 24 January 1994 for the Promotion and Protection of Investments between the United Kingdom of Great Britain and Northern Ireland and the Republic of Latvia.

6 According to the applicant, in December 2017, CR reported to the Latvian authorities the acts of corruption referred to in paragraph 4 above.

7 On 17 February 2018, A was arrested following the opening, on 15 February 2018, of a preliminary criminal investigation initiated against him by the Korupcijas novēršanas un apkarošanas birojs (Anti-Corruption Office, Latvia; 'the KNAB'). The subject of that investigation was accusations of corruption in connection with the prudential supervision procedure in respect of a Latvian bank other than the applicant. By decision of 19 February 2018, when A was released, the KNAB imposed a number of security measures on him, including the prohibition on performing his duties as Governor of the Central Bank of Latvia.

8 On 28 June 2018, A was charged by the prosecutor leading the investigation referred to in paragraph 7 above. The indictment, supplemented on 24 May 2019, contained three charges. The first charge concerned the acceptance, in 2010, of an offer of a bribe by the chairman of the supervisory board of a Latvian bank other than the applicant, and acceptance of the bribe itself, in return for which A allegedly provided advice to enable that bank to avoid supervision by the FCMC and refrained from participating in the FCMC meetings at which issues relating to the supervision of that bank were discussed. The second charge concerned, first, the acceptance, after 23 August 2012, of an offer of a bribe by the Vice-President of the board of directors of the same bank, in return for advice given by A in order to obtain the lifting of the restrictions on activities

ordered by the FCMC and to prevent other restrictions, and, secondly, the acceptance by A of payment of half of that bribe. The third charge concerned money laundering intended to conceal the origin, transfers and ownership of the funds paid to A corresponding to the bribe referred to in the second charge.

9 On 1 October 2018, the applicant notified the FCMC of its intention to acquire directly a qualifying holding in another Latvian credit institution B ('the target bank') and to exceed 50% of the capital and voting rights in the latter. On the same day, CR notified the FCMC of his intention to acquire, indirectly through his shareholding in the applicant, a qualifying holding in the target bank.

10 On 3 October 2018, the FCMC informed the applicant that it considered that its notification was incomplete and that it would not initiate the assessment of that notification. The following day, it requested the applicant to provide further information.

11 On 19 October 2018, the indirect proposed acquirers other than CR, including CT, notified the FCMC of their intention to acquire indirectly a qualifying holding in the target bank.

12 On 19 and 22 October 2018, the applicant submitted additional information to the FCMC, including a business plan.

13 On 30 October 2018, the FCMC informed the applicant that the information provided was incomplete and that it would not initiate the assessment process. The following day, the FCMC requested further information.

14 On 1 and 20 November 2018, the requested additional information was provided by the proposed acquirers, including an updated business plan.

15 On 23 November 2018, the FCMC informed the proposed acquirers that it acknowledged receipt of the notifications, that those notifications were complete and that they would be assessed within 60 working days.

16 On 15 and 18 January 2019, FCMC asked the applicant and CR to provide additional information. It suspended the assessment period until the date of receipt of the relevant information and until 13 February 2019 at the latest.

17 On 12 and 13 February 2019, the applicant and CR provided additional information.

18 By letter of 15 February 2019, the FCMC acknowledged receipt of the information provided and informed the proposed acquirers that the assessment period would expire on 22 March 2019.

19 By judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia* (C-202/18 and C-238/18, EU:C:2019:139), the Court annulled the decision of the KNAB of 19 February 2018 in so far as it prohibited A from performing his duties as Governor of the Central Bank of Latvia. The Court considered that the Republic of Latvia had not established that relieving A from office as Governor of the Central Bank of Latvia was based on the existence of sufficient indications that he had engaged in serious misconduct for the purposes of the second subparagraph of Article 14.2 of the Statute of the European System of Central Banks and of the ECB.

20 On the same day, the FCMC adopted Decision No 45/2019, requiring the applicant to comply, on an individual and consolidated basis, with a total capital requirement in the context of the supervisory review and evaluation process ('the total SREP capital requirement') of 12%.

21 On 1 March 2019, the FCMC submitted to the ECB a proposal for a decision, within the meaning of Article 15(2) of Regulation No 1024/2013, to the effect of an opposition to the proposed acquisition.

22 By letter of 7 March 2019, the ECB invited the proposed acquirers to submit observations on a draft decision.

23 By letter of 14 March 2019, the applicant and CR submitted observations.

24 By letter dated 21 March 2019, the ECB notified the proposed acquirers regarding the contested decision. By that decision, the ECB opposed the acquisition of qualifying holdings and the exceeding of:

– 30% of the capital and voting rights held indirectly by CR and other parties acting jointly, as indirect proposed acquirers, in the target bank;

– 50% of the capital and voting rights held directly by the applicant, as a direct proposed acquirer, in the target bank.

25 The ECB attached to the contested decision its response to the observations submitted by the applicant and CR in their letter of 14 March 2019 ('the response to the observations').

26 In the first place, as regards the criterion of financial soundness of the proposed acquirers the ECB stated that that criterion had to be regarded as fulfilled if it were established that the proposed acquirer had not only the capacity to finance the proposed acquisition, but also the capacity to maintain, for the foreseeable future, a sound financial structure in respect of both the direct proposed acquirer and the target bank.

27 First, the ECB considered that the applicant had funds enabling it to purchase the shares of the target bank. However, it found that the applicant had incurred significant net losses. It considered that the applicant was facing a high level of credit risk, in particular a non-performing loans ratio of 47% in mid-2018, and a low level of capital. It stated in particular that the applicant's capital ratios constituted a breach of the overall capital requirement (OCR). It added that, at the end of 2018, the applicant breached the large exposure requirements in respect of several counterparties. It stated that the applicant was in breach of limits applicable to transactions with related parties as regards CR. The ECB took the view that the applicant would not be in a position to provide financial support to the target bank if needed.

28 Secondly, the ECB considered that the indirect proposed acquirers, who would indirectly control the target bank and the new group set up after the proposed acquisition ('the new group'), would not be able to provide sufficient financial support to the target bank and to the new group. It found that CR, the applicant's majority shareholder, had not declared financial resources other than his shareholding in the applicant, for an estimated value of EUR 13.6 million, which had to be reduced by his liabilities to the applicant amounting to EUR 11.8 million. It considered that the business plan submitted by the proposed acquirers revealed that the new group would have a low level of capital. It found that the total capital ratio of the new group would not make it possible to

achieve the OCR currently applicable to the applicant at group level. In general, it considered that the level of capital of the new group would not be adequate in view of the fact that that group presented a high level of risk and that future capital injections would probably be necessary.

29 In addition, the ECB considered that there were serious doubts as to whether the indirect proposed acquirers were actually willing to support the target bank if needed. It noted that there was no firm and irrevocable commitment by the indirect proposed acquirers to provide such support. It also took account of the substantial lack of financial support provided to the applicant in the recent past.

30 The ECB concluded that the financial soundness criterion was not satisfied.

31 In the second place, as regards the criterion of the credit institution's ability to comply with prudential requirements, the ECB considered that that ability had to be assessed not only at target-bank level, but also at new-group level. It added that it was necessary to consider the situation not only at the time of the proposed acquisition, but also after that acquisition.

32 The ECB considered that, although the proposed acquisition would not have an immediate negative impact on the compliance, by the target bank alone, with capital and liquidity requirements at individual level, the new group would probably not comply with the capital requirements both in the base scenario and adverse scenario of the business plan submitted by the proposed acquirers. Assuming that the total SREP capital requirement applicable to the new group would not be lower than the requirement applicable to the applicant in 2018 and 2019, the new group would breach the applicable OCR.

33 The ECB also found that the target bank had incurred significant losses over the previous two years. It stated that the FCMC had initiated an administrative procedure on 26 February 2018 concerning the target bank's deficiencies in its internal control system and anti-money laundering. It considered that the new group would face a high risk profile and that it could reasonably be expected that the total SREP capital requirement applicable to that group would be higher than the projected levels in the base scenario of the business plan.

34 The ECB considered that that base scenario was excessively optimistic, in that it envisaged a very quick return to profitability and accumulation of profits. It stated that the business plan did not provide any detailed and convincing information on the period of time needed to break even and to achieve such a level of profit in one year.

35 The ECB stated that the proposed acquirers had provided several adverse scenarios. It noted that, in the most adverse scenario, the operating costs of the target bank would remain constant and that the bank would receive a fine of EUR 1.5 million imposed by the FCMC in the administrative procedure relating to anti-money laundering. In that scenario, there would be an additional capital deficit compared to the OCR of 2019. The ECB considered that those adverse scenarios were more realistic than the base scenario and highlighted the insufficient level of capital of the new group.

36 The ECB considered that, consequently, the new group would probably not comply with the applicable capital requirements.

37 The ECB stated that the new group would be faced with the problems inherited from the applicant, namely a high level of credit risk and a breach of the large exposure limits. It considered that the persistence of the applicant's high level of credit risk would have an impact on the risk of a deficit in the new group's capital. It took the view that, according to the adverse scenarios, the applicant's breaches of large exposure limits would remain.

38 Finally, the ECB considered that the weaknesses in terms of governance and internal control of the applicant and of the target bank, including as regards the prevention of money laundering, were not addressed in the business plan and that there was no reason to believe that the formation of a new group would resolve those weaknesses.

39 Generally, the ECB considered that the strategy of the proposed acquirers vis-à-vis the target bank was unclear. It took the view that the proposed acquirers had provided only very limited information on the planned merger, which was to take up to 18 months, and on the organisation of the new group until the completion of the merger. It stated that that lack of clarity was apparent in the poor quality of the business plan in terms of consistency, readability and the description of the planned actions, which increased the doubts as to the overall credibility of the proposed acquisition.

40 The ECB considered that the proposed acquisition could not lead to the formation of a viable new banking group, in particular because the measures capable of ensuring the success of such an operation were not sufficiently detailed or convincing. It considered that the new group would be impaired by an unsustainable business model, a weak system of governance and internal control inherited from the two entities which were to merge, and an unclear strategy to overcome those problems, and would have a low level of capital, posing a high risk of breach of prudential requirements. It took the view that, irrespective of the proposed merger, and when considering only the target bank, the proposed acquisition would have a negative impact on that bank's ability to resolve its current weaknesses.

41 Accordingly, the ECB considered that the criterion of compliance with prudential requirements was not satisfied either.

42 The ECB concluded that, since neither the criterion of financial soundness of the proposed acquirer, nor the criterion of compliance with prudential requirements was met, it opposed the proposed acquisition, without examining that acquisition in the light of the other criteria laid down in Article 23(1) 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/EC and 2006/49/EC (OJ 2013 L 176, p. 338), as transposed into Latvian law.

43 By application lodged at the Court Registry on 31 May 2019, the applicant, CR and CT brought the present action.

II. Events subsequent to the bringing of the action

44 On 15 August 2019, the ECB concluded that the applicant was failing or likely to fail within the meaning of Article 18(1)(a) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single

Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1). On the same day, the Single Resolution Board (SRB) decided not to adopt a resolution scheme under Article 18(1) of that regulation in respect of the applicant.

45 On 22 August 2019, the FCMC requested the Rīgas pilsētas Vidzemes priekšpilsētas tiesa (Riga City Court (Vidzeme District), Latvia) to declare the applicant insolvent.

46 On 12 September 2019, the Rīgas pilsētas Vidzemes priekšpilsētas tiesa (Riga City Court (Vidzeme District)) declared the applicant insolvent. It appointed an insolvency administrator to deal with the insolvency proceedings ('the insolvency administrator') and transferred to him all the powers of the applicant and its board of directors. It rejected the request of the applicant's board of directors to maintain its rights to represent the applicant in the context of the action against the ECB's assessment of 15 August 2019 which had found that the applicant was failing or likely to fail, against the SRB's decision of the same date not to adopt a resolution scheme in respect of the applicant, and against the FCMC's decision to initiate insolvency proceedings. That court added that that did not exclude the possibility for the applicant's board of directors to submit a separate request to the insolvency administrator concerning the rights of representation in specific assignments.

47 Also on 12 September 2019, the FCMC requested the ECB to withdraw the applicant's authorisation.

48 By application lodged at the Court Registry on 25 October 2019 (Case T-732/19), the applicant and other shareholders or potential shareholders of the applicant sought annulment of the SRB's decision of 15 August 2019 not to adopt a resolution scheme in respect of the applicant.

49 On 21 December 2019, A ceased to hold office as Governor of the Central Bank of Latvia.

50 By application lodged at the Court Registry on 29 January 2020 (Case T-50/20), the applicant sought annulment of the ECB's decision of 19 November 2019 refusing to instruct the insolvency administrator to grant the lawyer authorised by the applicant's board of directors access to the applicant's premises, information, staff and resources.

51 On 17 February 2020, the ECB withdrew the applicant's authorisation. That withdrawal took effect on the following day.

52 By application lodged at the Court Registry on 27 April 2020 (Case T-230/20), the applicant brought an action against that decision.

III. Procedure and forms of order sought

53 On 10 September 2019, the ECB lodged its defence at the Court Registry.

54 By document lodged at the Court Registry on 20 September 2019, the European Commission sought leave to intervene in the present proceedings in support of the form of order sought by the ECB. By decision of 28 October 2019, the President of the Fourth Chamber of the General Court granted the Commission leave to intervene.

55 On 4 November 2019, the Commission lodged its statement in intervention at the Court Registry.

56 On 28 April 2020, the President of the Fourth Chamber decided, pursuant to Article 69(d) of the Rules of Procedure of the General Court, to stay the proceedings until the delivery of the decision of the Court in Case T-50/20. By order of 12 March 2021, *PNB Banka* v *ECB* (T-50/20, EU:T:2021:141), the Court gave its decision in that case, and the proceedings in the present case resumed on that date.

57 On 28 April 2021, and subsequently on 28 June 2021, the applicant, CR and CT requested that the proceedings be stayed pending the ruling of the Court of Justice in Case C-321/21 P, relating to the appeal brought against the order of 12 March 2021, *PNB Banka* v *ECB* (T-50/20, EU:T:2021:141). On 20 May 2021, and subsequently on 6 August 2021, the President of the Fourth Chamber decided, after hearing the ECB, not to stay the proceedings.

58 By letter of 8 July 2021, the applicant's representative informed the Court that he no longer represented CR and CT. By order of 21 December 2021, the Court (Fourth Chamber) decided, on the basis of Article 131(2) of the Rules of Procedure, that there was no longer any need to rule on the present action in so far as it was brought by CR and CT.

59 The deadline for lodging the reply was last set at 30 September 2021. The applicant did not lodge a reply within the prescribed period.

60 The applicant claims that the Court should:

– annul the contested decision;

– order the ECB to pay the costs.

61 The ECB, supported by the Commission, contends that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs.

IV. Law

A. The existence, for the representative who brought the action on behalf of the applicant, of an authority to act

62 According to 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.

63 An authority given by the Chairman of the applicant's board of directors on 5 March 2019 is included in the file (Annex A.2).

64 The applicant claims that the insolvency administrator refused to allow the lawyer appointed by the applicant to represent it access to the applicant's documents, premises, staff and resources. The applicant produced, in its reply of 13 March 2020 to a question put by the Court, a letter from the insolvency administrator of 16 September 2019 stating that the applicant's lawyer should, first, 'submit to the [Insolvency] Administrator a written status report on the

performance of the Agreement [relating to the provision of legal services], indicating in detail the instructions received from [the applicant], tasks performed by [the lawyer] and whether there is any actual work in progress', secondly, 'inform the [Insolvency] Administrator regarding payments …', thirdly, 'refrain from any activities on behalf of [the applicant] without prior consultation with the [Insolvency] Administrator, especially to cease providing billable services to [the applicant]'.

65 Despite that letter from the insolvency administrator of 16 September 2019, it is not apparent from the documents in the file, nor does the applicant or the ECB claim, that the insolvency administrator revoked the authority given by the chairman of the applicant's board of directors on 5 March 2019. That letter does not mention such a revocation, even though it states that the lawyer appointed by the chairman of the board of directors must refrain from any activities on behalf of the applicant without prior consultation with the insolvency administrator.

66 Accordingly, the Court finds that the applicant lodged an authority for its lawyer to bring an action in accordance with Article 51(3) of the Rules of Procedure.

B. The requests for a stay of proceedings submitted on 28 April 2021, and subsequently on 28 June 2021

67 On 28 April 2021, and subsequently on 28 June 2021, the applicant requested that the proceedings be stayed. In support of its requests that proceedings be stayed, it claimed that it needed access to its premises, files and financial resources, and that the insolvency administrator was not cooperating in order to ensure that the applicant was effectively represented, despite the judgment of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others* (C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923).

68 Although the Court is not required to state the reasons for deciding whether or not to stay proceedings pursuant to Article 69(c) or (d) of the Rules of Procedure, it considers it appropriate, exceptionally, to state the following.

69 The decision whether or not to stay proceedings, on the basis of Article 69(c) or (d) of the Rules of Procedure, falls within the discretion of the Court (see, to that effect, orders of 20 October 2011, *DTL* v *OHIM*, C-67/11 P, not published, EU:C:2011:683, paragraphs 32 and 33; of 15 October 2012, *Internationaler Hilfsfonds* v *Commission*, C-554/11 P, not published, EU:C:2012:629, paragraph 37; and of 17 January 2018, *Josel* v *EUIPO*, C-536/17 P, not published, EU:C:2018:14, paragraph 5).

70 In the present case, on 28 April 2020, the proceedings were stayed pending delivery of the Court's decision in Case T-50/20, by which the applicant had sought annulment of the ECB's decision of 19 November 2019 refusing to instruct the insolvency administrator to grant the lawyer authorised by the applicant's board of directors access to its premises, information, staff and resources.

71 By order of 12 March 2021, *PNB Banka* v *ECB* (T-50/20, EU:T:2021:141), the Court dismissed the applicant's action. It held, in particular, that the ECB manifestly lacked competence to accede to the request of the applicant's board of directors to instruct the insolvency administrator to grant the lawyer authorised by that board access to the applicant's premises, information, staff and resources (paragraph 73). The General Court also held that decisions taken by the national authorities in the context of insolvency proceedings, such as those to which the applicant is

subject, in response to any request for access to documents, premises, staff or the resources of the credit institution at issue are, as a rule, subject to review by the national courts, which, if necessary, may refer questions to the Court of Justice for a preliminary ruling under Article 267 TFEU in cases where they encounter difficulties in interpreting or applying EU law (paragraph 72).

72 It should also be noted that, despite, inter alia, the stay of the proceedings from 28 April 2020 to 12 March 2021, the applicant has not established or even claimed, including in its request of 28 June 2021 that the proceedings be stayed, that it brought legal proceedings against the insolvency administrator, whom it nevertheless accuses, before the Court, of depriving the lawyer authorised by the applicant's board of directors of access to its premises, information, staff and resources since the end of 2019.

73 After producing exchanges of letters and emails with the insolvency administrator that had taken place on 12 and 16 September 2019 and in November 2019, the applicant merely claimed, in its request for a stay of the proceedings lodged at the Court Registry on 28 April 2021, that it had 'reinforced it efforts' with regard to the insolvency administrator and the Latvian courts, without providing any details of the nature of those efforts.

74 In addition, it is not apparent from the decision of 12 September 2019 of the Rīgas pilsētas Vidzemes priekšpilsētas tiesa (Riga City Court (Vidzeme District)), referred to in paragraph 46 above, that the applicant would be prevented from bringing a potential dispute with the insolvency administrator before the Latvian courts. Not only does that decision mention that the applicant's board of directors does have the option to submit a separate request to the insolvency administrator as regards the right of representation in specific missions, but the judgment of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others* (C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923), relied on by the applicant in order to argue that the insolvency administrator did not cooperate satisfactorily to ensure that the applicant was represented effectively, came after that decision, with the result that the applicant could, a priori, rely on that judgment as a new element before the national court.

75 Accordingly, the Court considers that there is no need to stay the proceedings again.

C. Oral part of the procedure

76 According to Article 106 of the Rules of Procedure:

'1. The procedure before the General Court shall include, in the oral part, a hearing arranged either of the General Court's own motion or at the request of a main party.

2. Any request for a hearing made by a main party must state the reasons for which that party wishes to be heard. …

3. If there is no request as referred to in paragraph 2, the General Court may, if it considers that it has sufficient information available to it from the material in the file, decide to rule on the action without an oral part of the procedure. …'

77 It thus follows from the wording of Article 106 of the Rules of Procedure that, in the absence of a request for a hearing stating the reasons why a main party wishes to be heard, the Court may, if it considers that it has sufficient information, rule on the action without an oral part of the procedure.

78 The explanatory notes to the draft Rules of Procedure of 14 March 2014, which are accessible to the public on the website of the Court of Justice of the European Union, also confirm that, having regard in particular to the requirements of the sound administration of justice and procedural economy, 'the General Court proposes to be able to dispense with organising a hearing if it does not consider a hearing necessary, unless one of the main parties submits a request stating the reasons for which it wishes to be heard'.

79 The Practice Rules for the implementation of the Rules of Procedure ('the PRI') state, in paragraph 142, that a main party who wishes to present oral argument must submit a reasoned request for a hearing, within three weeks after service on the parties of notification of the close of the written part of the procedure. That reasoning must be based on a real assessment of the benefit of a hearing to the party in question and must indicate the elements of the case file 'or' arguments which that party considers it necessary to develop 'or' refute more fully at a hearing. In order better to ensure that the arguments remain focused at the hearing, the statement of reasons should 'preferably' not be in general terms merely referring, for example, to the importance of the case. Paragraph 143 of the PRI states that, if no reasoned request is submitted by a main party within the prescribed time limit, the Court may decide to rule on the action without an oral part of the procedure.

80 It thus follows from Article 106 of the Rules of Procedure and from paragraphs 142 and 143 of the PRI that, if no request for a hearing is made, or if a request for a hearing is made without a statement of reasons, the Court may decide to rule on the action without an oral part of the procedure if it considers that it has sufficient information available to it from the material in the case file.

81 In the present case, the applicant, by letter of 29 November 2021, expressed its view on the holding of a hearing in the following terms:

'1. I confirm that for the reasons which I have explained in great detail there is currently no effective representation of the [applicant]. Merely in order to comply with the relevant deadline I hereby request an oral hearing. However, it would be necessary for the effective representation [of the applicant] to be restored first.

2. A hearing can neither be prepared nor attended under the current circumstances.'

82 It is apparent from that letter of 29 November 2021 that the request for a hearing made by the applicant lacks any statement of reasons. That request does not state any reason why the applicant wishes to be heard.

83 In addition, in its letter of 25 October 2021 informing the main parties of the closure of the written part of the procedure, the Court Registry referred to the provisions of Article 106(2) of the Rules of Procedure and those of paragraph 142 of the PRI and drew the main parties' attention to the fact that, in the context of the health crisis, the statement of reasons had to satisfy the requirements of that paragraph of the PRI.

84 It is true that the applicant submitted, in its request for a hearing, that it considered that it did not have any effective representation.

85 Even if, in so doing, the applicant attempts implicitly to justify the failure to state reasons for its request for a hearing, which is not, however, apparent from that request, it must be held that its argument relating to a lack of effective representation cannot be regarded as a justification for the failure to state reasons for that request. In particular, the fact that the applicant had no effective representation, on the basis which it states, in no way prevented it from submitting detailed information in support of a request for a hearing.

86 Accordingly, given that the applicant did not submit any reasoning whatsoever in its request for a hearing and, moreover, it had been expressly reminded by the Court Registry of the obligation to state reasons for that request, it must be held that that request for a hearing does not comply with Article 106(2) of the Rules of Procedure.

87 In those circumstances, the Court, finding that it has sufficient information available to it from the documents in the file, has decided to rule on the action without an oral part of the procedure, in accordance with Article 106(3) of the Rules of Procedure.

D. Substance

1. The first plea in law, alleging that the assessment period expired before the contested decision was adopted

88 The applicant submits that the assessment period provided for in Article 22(2) of Directive 2013/36 expired before the contested decision was adopted. The proposed acquisition was deemed to have been approved if the supervisory authority did not oppose it before the expiry of that period, pursuant to Article 22(6) of that directive, and the ECB could not, on the date of the contested decision, have opposed the proposed acquisition.

89 The applicant submits that, on the date of the email from the FCMC of 25 October 2018, all the conditions were met for the assessment period to begin. That assessment period began at the latest on 29 October 2018, two working days after that email. By that email, and then by the letter of 30 October 2018, the FCMC acknowledged that it had received notification of the proposed acquisition and all the required documents. The applicant adds that, although it is true that, in the FCMC's email of 25 October 2018 and subsequently in its letter of 30 October 2019, the FCMC described an approach which differs from the procedure and deadlines laid down in Article 22 of Directive 2013/36 and which, according to the FCMC, was imposed on it by the ECB, that argument is irrelevant.

90 The ECB disputes the applicant's arguments.

91 According to Article 22(1), (2) and (6) of Directive 2013/36:

'1. Member States shall require any natural or legal person or such persons acting in concert (the "proposed acquirer"), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the credit institution would become its subsidiary (the "proposed acquisition"), to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in

writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4) [of this directive]. …

2. The competent authorities shall acknowledge receipt of notification under paragraph 1 or of further information under paragraph 3 promptly and in any event within two working days following receipt in writing to the proposed acquirer.

The competent authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 23(4) [of this directive] (the "assessment period"), to carry out the assessment provided for in Article 23(1) [of this directive] (the "assessment").

The competent authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

…

6. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.'

92 According to Article 23(4) of Directive 2013/36: 'Member States shall publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of notification referred to in Article 22(1) [of this directive]. …'

93 Articles 22 and 23 of Directive 2013/36 were transposed by Articles 28 and 29 of the Latvian Law on Credit Institutions, as stated in Regulation 192 of the FCMC of 28 November 2017, entitled 'List of the information required for notification of an acquisition of, or increase in, a qualifying holding, and general principles and procedure for the assessment of a notification' ('Regulation 192').

94 Article 28 of Regulation 192 provides that the acknowledgment of receipt of the notification of the proposed acquisition is to state, inter alia, that that notification is to be regarded as complete.

95 The Joint Guidelines of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) on the prudential assessment of acquisitions and increases of qualifying holdings [in entities] in the financial sector, published on 20 December 2016 (JC/GL/2016/01; 'the Joint Guidelines'), also contain details of the notification. Both the ECB and the FCMC indicated that they had complied with those guidelines in accordance with Article 16(3) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12). According to the second sentence of point 9.1 of those guidelines, the notification should be considered to be complete when it includes all the required information set out in the list to be published in accordance with the relevant legislation for the purposes of the prudential assessment by the target supervisor. The third sentence of paragraph 9.1 states that the acknowledgement of receipt should exclusively constitute a procedural step relating to the

formal completeness of the notification, having the effect of starting the 60 working days period for the prudential assessment, and does not entail a substantive review by the target supervisor of the documentation provided.

96 In the present case, by letter dated 23 November 2018, the FCMC acknowledged receipt of the notification of the proposed acquisition, in accordance with Article 22(2) of Directive 2013/36, as transposed into Latvian law. That letter states in particular, in accordance with Article 28 of Regulation 192, that the notification is complete.

97 The applicant is wrong to claim that, before 23 November 2018, the FCMC acknowledged, by its email of 25 October 2018 and its letter of 30 October 2018, that it had received the notification and all the required documents.

98 On the contrary, first, by that email of 25 October 2018, referred to in that letter of 30 October 2018, the FCMC informed the applicant that the ECB was in the process of verifying whether the notification was complete. Secondly, by that letter of 30 October 2018, the FCMC informed the applicant that the reports submitted were incomplete and that the assessment procedure had not begun. It added that it would inform the applicant, by separate letter, regarding the missing information. On 31 October 2018, it sent the applicant a list of that information.

99 Consequently, neither the FCMC's email of 25 October 2018 nor its letter of 30 October 2018 constituted an acknowledgement of receipt of the notification, within the meaning of Article 22(2) of Directive 2013/36, as transposed into Latvian law.

100 Moreover, the applicant does not claim that the information requested by the FCMC in its letter of 31 October 2018 was unnecessary in order to carry out the assessment and did not have to be communicated to the FCMC at the time of notification, in accordance with Article 22(1) and Article 23(4) of Directive 2013/36, as transposed into Latvian law. In particular, the applicant does not state that that information is not mentioned in Regulation 192, which lists the information that is necessary for carrying out the assessment and must be communicated to the competent authorities at the time of the notification referred to in Article 22(1) of Directive 2013/36, and the annexes to that regulation.

101 For the sake of completeness, it should be noted that the ECB submits, without being contradicted, that certain information required in accordance with Annex 9 to Regulation 192 was missing from the business plan submitted on 19 October 2018, namely, first, a plan for the implementation of the objective pursued by the proposed acquisition, secondly, the planned financial results for the next three years (at individual and consolidated level), thirdly, the composition of the board of directors, the composition of the supervisory council and its obligations, and the composition of the main committees of the financial institution established by the board of directors or the supervisory council, including information about persons who manage or will manage the financial institution and its committees.

102 Accordingly, the applicant is not entitled to claim that, as from 25 October 2018, the conditions were met for the assessment period to begin.

103 The first plea in law must therefore be rejected as unfounded.

2. The second plea in law, alleging infringement of the procedure laid down in Article 15 of Regulation No 1024/2013 and in Articles 85 to 87 of Regulation No 468/2014

104 The applicant submits that the FCMC and the ECB failed to comply with the procedural rules applicable to the present case, laid down in Article 15 of Regulation No 1024/2013 and in Articles 85 to 87 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 European Central Bank and national competent authorities and with national designated authorities (OJ 2014 L 141, p. 1), given that the FCMC did not submit any proposal for a decision.

105 The applicant also claims that the contested decision is vitiated by a procedural defect in that the regulatory capital requirements on which it is based were defined only in a letter received on 1 March 2019, long after notification of the proposed acquisition, at a time when it was no longer possible for the applicant to amend that notification. Furthermore, the ECB failed to take account of the fact that the specific requirements set by the FCMC were challenged by the applicant and are subject to review.

106 The ECB disputes the applicant's arguments.

107 According to Article 15 of Regulation No 1024/2013:

'1. Without prejudice to the exemptions provided for in point (c) of Article 4(1) [of this regulation], any notification of an acquisition of a qualifying holding in a credit institution established in a participating Member State or any related information shall be introduced with the national competent authorities of the Member State where the credit institution is established in accordance with the requirements set out in relevant national law based on the acts referred to in the first subparagraph of Article 4(3) [of this regulation].

2. The national competent authority shall assess the proposed acquisition, and shall forward the notification and a proposal for a decision to oppose or not to oppose the acquisition, based on the criteria set out in the acts referred to in the first subparagraph of Article 4(3) [of this regulation], to the ECB, at least ten working days before the expiry of the relevant assessment period as defined by relevant Union law, and shall assist the ECB in accordance with Article 6 [of this regulation].

3. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in relevant Union law and in accordance with the procedure and within the assessment periods set out therein.'

108 In the first place, in so far as the applicant claims that the contested decision is contrary to Article 15 of Regulation No 1024/2013 and Articles 85 to 87 of Regulation No 468/2014 given that the FCMC did not submit a proposal for a decision to the ECB, it must be held that that argument has no factual basis. As is apparent from paragraphs 1.3 and 2.1 of the contested decision, the FCMC submitted a proposal for a decision to the ECB on 1 March 2019, which was produced before the Court.

109 In the second place, the applicant claims that there was a procedural defect, in that the ECB relied on regulatory capital requirements which were set by the FCMC only by a letter which the applicant states it received on 1 March 2019, after notification of the proposed acquisition.

110 In that regard, it should be noted that neither Article 15 of Regulation No 1024/2013 nor Articles 85 to 87 of Regulation No 468/2014, relied on by the applicant, preclude the ECB from relying on a fact subsequent to the notification of the proposed acquisition. The applicant does not rely on any other provision or principle in support of its line of argument.

111 Consequently, in so far as the ECB relied on regulatory capital requirements set by the FCMC after the notification, the procedure is not vitiated by any defect in the light of the provisions relied on by the applicant.

112 Furthermore, as the ECB correctly submits, it follows from the provisions of Article 23(1)(d) of Directive 2013/36, as transposed into Latvian law before the notification of the proposed acquisition, that the competent authorities must assess whether the credit institution will be able to comply, and continue to comply, with the prudential requirements.

113 Paragraph 13.4 of the Joint Guidelines states, moreover, that the supervisory authority of the target bank should assess the latter's ability to comply, at the time of the proposed acquisition, and to continue to comply 'after the acquisition' with all prudential requirements.

114 It follows from Article 23(1)(d) of Directive 2013/36 that, as the ECB correctly submits, the competent authorities must carry out a prospective assessment of compliance with prudential requirements by the credit institution concerned.

115 Consequently, the ECB was entitled to take into account, in point 2.3.1 of the contested decision, the total SREP capital requirement for 2019, which was set by the FCMC in a letter which the applicant states it received on 1 March 2019, when the ECB assessed whether the new group might not comply with the regulatory capital requirements to which it would be subject.

116 It should also be noted that, in order to assess the new group's ability to comply with prudential requirements, the ECB relied, in paragraph 2.3.1 of the contested decision, not only on the total SREP capital requirement for 2019, but also on the total SREP capital requirement applicable to the applicant in 2018. Thus, without taking into account the total SREP capital requirement for 2019, according to the base scenario, the total capital ratio of the new group envisaged for the end of 2019 was only 12.91%, that is to say, a level below the OCR to be complied with by the applicant for 2018 (13.55%).

117 Lastly, in so far as the applicant states that the capital requirements set by the FCMC were challenged, it must be held, as the ECB correctly states, that the legal proceedings before the Latvian courts do not have suspensory effect and did not preclude the ECB from relying in part on the total SREP capital requirement for 2019.

118 In the third place, even if, as the ECB envisages, the applicant could be regarded as having raised, in support of the second plea, an argument that the ECB wrongly intervened in the procedure before the FCMC sent a proposal for a decision, which was not the case, that argument would have to be rejected.

119 Where the EU legislature opts for an administrative procedure under which the national authorities adopt acts that are preparatory to a final decision of an EU institution which produces legal effects and is capable of adversely affecting a person, it seeks to establish between the EU

institution and the national authorities a specific cooperation mechanism which is based on the exclusive decision-making power of the EU institution (judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 48).

120 Under Article 4(1)(c) of Regulation No 1024/2013, read in conjunction with Article 15(3) thereof and Article 87 of Regulation No 468/2014, the ECB has exclusive competence to decide whether or not to authorise the proposed acquisition, at the end of the procedure laid down, in particular, in Article 15 of Regulation No 1024/2013 and Articles 85 and 86 of Regulation No 468/2014 (judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 54).

121 Within the framework of relations governed by the principle of sincere cooperation by virtue of Article 6(2) of Regulation No 1024/2013, the national authorities' role, as is apparent from that provision, Article 15(1) and (2) of that regulation and Articles 85 and 86 of Regulation No 468/2014, consists in registering applications for authorisation and in assisting the ECB, which alone has the decision-making power, in particular by providing it with all the information necessary for carrying out its tasks, by examining such applications and then by forwarding to the ECB a proposal for a decision, which is not binding on the ECB and which, moreover, EU law does not require to be notified to the applicant (judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 55).

122 In view of the particular mechanism for collaboration which the EU legislature intended to establish between the ECB and the national competent authority for the examination of applications for authorisation prior to any acquisition or increase in qualifying holdings in credit institutions, the ECB may intervene in the procedure before that national competent authority sends a proposal for a decision provided for in Article 15(2) of Regulation No 1024/2013 and even from the beginning of the procedure (see, to that effect, Opinion of Advocate General Campos Sánchez-Bordona in *Berlusconi and Fininvest*, C-219/17, EU:C:2018:502, points 91, 95, 98 and 101).

123 Article 85(1) of Regulation No 468/2014 provides, moreover, that a national competent authority that receives a notification of an intention to acquire a qualifying holding in a credit institution established in that participating Member State is to notify the ECB of such notification 'no later than' five working days following the acknowledgement of receipt in accordance with Article 22(2) of Directive 2013/36.

124 The second plea in law must therefore be rejected as unfounded.

3. The sixth plea in law, alleging distortion of the relevant facts

125 It is appropriate, in the present case, to examine the sixth plea in law, alleging distortion of the relevant facts, immediately after the first and second pleas in law, relating to the infringement of procedural rules, and before the third plea in law, relating to the infringement of Article 23 of Directive 2013/36.

126 In the sixth plea, the applicant submits that the contested decision is based on an incorrect factual assessment. The contested decision fails to take account of the fact that the proposed acquisition involves a significant contribution by CR to the applicant's capital, yet this is an essential fact.

127 The ECB disputes the applicant's arguments.

128 By its sixth plea, the applicant must be regarded as having raised a plea alleging that the ECB made a factual error as regards the contribution to the applicant's capital resulting from the proposed acquisition.

129 This plea has no factual basis.

130 Contrary to what the applicant submits, the ECB did take account of the fact that the proposed acquisition involved a 'capital contribution' to the applicant. It stated that that 'capital contribution' resulted from a share exchange agreement between CR and certain shareholders of the target bank. It considered that that 'capital contribution' did not support the conclusion that CR was willing to provide additional support in the future and that, above all, that did not call into question the need to assess the financial soundness of all the proposed acquirers. It considered that that 'capital contribution' would have a positive effect on the applicant's capital ratios under its current perimeter. It nevertheless considered that, despite that effect, the applicant could not be regarded as financially sound because of its financial weaknesses, namely its negative profitability, the high level of its non-performing loans and the exceeding of the large exposure limits. The ECB also considered that, despite that positive effect, the new group's ability to comply with prudential requirements had not been established (response to observations, pages 5 to 7).

131 The fact that the reference to that 'capital contribution' appears in the reply to the observations is irrelevant, given that the latter is annexed to the contested decision and must be regarded as forming an integral part of that decision.

132 Consequently, contrary to what the applicant submits, the ECB took account of the fact that the proposed acquisition involved a 'capital contribution' to the applicant, and did so for reasons which, moreover, are not vitiated by inaccuracy.

133 The sixth plea in law must therefore be rejected as unfounded.

4. The third plea in law, alleging misinterpretation and misapplication of the assessment criteria in Article 23 of Directive 2013/36

134 In the first place, the applicant submits that the ECB did not comply with the reasonable grounds requirement laid down in Article 23 of Directive 2013/36. It takes the view that an acquisition should be opposed only if it has a material adverse effect compared to a situation in which the proposed acquisition is not implemented. The Joint Guidelines state that 'the proposed acquisition should not adversely affect the target undertaking's compliance with prudential requirements'. The ECB opposed the proposed acquisition in the present case on the ground that the improvements that would have resulted from that acquisition were insufficient. The ECB's view means that the proposed acquisition could not take place even if its effects were positive in regulatory terms.

135 In the second place, as regards the financial soundness criterion, the applicant submits that, as regards the proposed acquirer's ability to maintain a sound financial structure for the foreseeable future, the ECB does not conclude that the proposed acquisition would have a material adverse effect. The ECB states that, in terms of capital requirements, that acquisition would lead to an improvement even in the most adverse scenario. The ECB fails to compare the proposed acquisition and the scenario where the two banks are not authorised to form a new group.

136 As regards the serious doubts as to the actual willingness of the indirect proposed acquirers to support the target bank if necessary, the applicant considers that the ECB is wrong to criticise the indirect proposed acquirers for having undertaken to support the new group in the event of a crisis. The ECB unjustifiably criticised, in the response to the observations, the fact that CR expected all arbitrary and discriminatory treatment by the Latvian authorities to be brought to an end. The ECB has not established that the facts complained of by CR, namely that A invited him to pay bribes and exerted pressure to obtain payment of them in order to avoid discriminatory treatment, were incorrect. The ECB unjustifiably criticised the fact that certain statements relating to the willingness to support the bank were accompanied by the words 'if this is appropriate'.

137 The applicant claims that there is a contradiction between the doubts expressed as to CR's willingness to support the target bank and the fact that the proposed acquisition constitutes, from the applicant's perspective, a capital contribution of at least EUR 10 million. Approximately 40% of that acquisition is financed by CR.

138 The applicant adds that the contested decision is based on a misinterpretation of the financial soundness criterion. The ECB wrongly relied on the existence of a general financing obligation, to the effect that the acquirer is supposed to be able and willing to meet, through its own capital, all the financing needs which the credit institution concerned may face in the future. A more appropriate interpretation of the financial soundness criterion is a more restrictive one, namely a solid financial situation which is not such as to give rise to problematic conduct.

139 In the third place, as regards the criterion of compliance with prudential requirements, the applicant submits that the contested decision is based on a misinterpretation and misapplication of that second criterion. The ECB did not conclude that the proposed acquisition would have a negative effect, whether for the target bank or for the applicant. It opposes a measure the effects of which are positive.

140 In the fourth and last place, the applicant submits that the contested decision is based on a misinterpretation of Article 23 of Directive 2013/36, in that the assessment criteria are regarded as substantive requirements the conditions of which must be met cumulatively. The ECB should have assessed, in the context of an overall assessment taking account of all the assessment criteria taken as a whole, whether there was a significant risk that the sound and prudent management of the credit institution would not be ensured.

141 The ECB, supported by the Commission, disputes the applicant's line of argument.

142 According to Article 23(1) and (2) of Directive 2013/36:

'1. In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3) [of this directive], the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation, knowledge, skills and experience, as set out in Article 91(1) [of this directive], of any member of the management body and any member of senior management who will direct the business of the credit institution as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

(d) whether the credit institution will be able to comply and continue to comply with the prudential requirements based on this Directive and 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)], and where applicable, other Union law, in particular Directives 2002/87/EC [of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ 2003 L 35, p. 1),] and 2009/110/EC [of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ 2009 L 267, p. 7)], including whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [(OJ 2005 L 309, p. 15)] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.'

143 The provisions of Article 23(1) and (2) of Directive 2013/36 were transposed into Latvian law by Article 29 of the Latvian Law on Credit Institutions and by Regulation 192.

144 As the parties agree, the ECB has a broad discretion when it adopts, as in the present case, a measure relating to the prudential supervision of a credit institution (see, to that effect, judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 86).

145 In that regard, the EU judicature therefore carries out a review of whether there has been a manifest error of assessment (see, to that effect and by analogy, judgment of 11 December 2018, *Weiss and Others*, C-493/17, EU:C:2018:1000, paragraph 24 and the case-law cited).

(a) The criterion of financial soundness of the proposed acquirer

146 The applicant submits, in the first place, that, in order to oppose the proposed acquisition on the basis of the financial soundness criterion, the ECB should have relied on the existence of a material adverse effect of the proposed acquisition compared with a situation in which that acquisition does not take place.

147 However, it does not follow either from Article 23(1) and (2) of Directive 2013/36, as transposed into Latvian law, or from the Joint Guidelines, that the ECB is required to demonstrate such an effect in order to oppose a proposed acquisition on the basis of the financial soundness criterion. A fortiori, it does not follow from those provisions that the ECB is required to carry out a counterfactual analysis of the situation in which that acquisition does not take place.

148 On the contrary, Article 51 of Regulation 192 defines the financial soundness of the proposed acquirer as its ability to finance the proposed acquisition and to maintain, for the foreseeable future, a sound financial structure for itself and the target undertaking, and does not refer to any ground of opposition based on the material adverse effect of the proposed acquisition, nor does it require an analysis of the situation in which that acquisition does not take place.

149 Although the applicant relies on paragraph 13.1 of the Joint Guidelines, it should be noted that that paragraph concerns the criterion of the target bank's compliance with prudential requirements, and not the criterion of the proposed acquirer's financial soundness.

150 Consequently, the applicant is not entitled to claim that the ECB infringed Article 23(1) of Directive 2013/36 by opposing the proposed acquisition on the basis of the criterion of the proposed acquirer's financial soundness without demonstrating that that acquisition would have a material adverse effect.

151 In the second place, the applicant submits that the ECB wrongly relied on the existence of a general financing obligation by taking the view that, in order for the proposed acquisition to be authorised in the light of the financial soundness criterion, the proposed acquirer would have to be able and willing to meet, by means of its own capital and without limit, all the financing needs which the credit institution concerned may face in the future.

152 That argument is based on an incorrect reading of the contested decision.

153 The ECB considered, in paragraphs 2.2.1 and 2.2.2 of that decision, that, in view of their financial situation, the proposed acquirers were not in a position to provide financial support to the target bank in a context in which, in view of the business plan submitted to the ECB, such support would probably be necessary.

154 In so doing, the ECB did not impose an unlimited financing obligation on the proposed acquirers, but merely assessed whether the proposed acquirers had sufficient financial soundness in order to meet the capital needs of the new group as such needs could be assessed in the light of the information which those proposed acquirers had themselves provided.

155 Consequently, the applicant's argument that the ECB wrongly relied on the existence of a general financing obligation on the part of the proposed acquirers must be rejected.

156 In the third place, it should be noted that the applicant does not dispute the financial difficulties which it faced, as assessed by the ECB in paragraph 2.2.1 of the contested decision. In particular, it does not dispute, first, that it had incurred significant net losses over the two preceding years, secondly, that it faced a high credit risk in the light of, in particular, a non-performing loans ratio of 47% in mid-2018, thirdly, that its capital ratios were such that they constituted a breach of the OCR in 2018, fourthly, that it breached the large exposure limits in respect of a number of counterparties at group level and, fifthly, that it breached the limits on transactions with related parties as regards CR.

157 Furthermore, nor does the applicant dispute the financial situation of the indirect proposed acquirers, as assessed by the ECB in paragraph 2.2.2 of the contested decision. In particular, it does not dispute that the indirect proposed acquirers, in particular CR, had declared a small amount of financial resources, as assessed by the ECB. Although the applicant states that the proposed acquisition would lead to an improvement in its capital situation, it does not dispute that the capital levels of the new group would not be adequate in view of the expected risk profile of that group and that future capital injections would probably be necessary.

158 Consequently, in view of the financial difficulties faced by the applicant, the low level of resources of the indirect proposed acquirers and the likely capital needs of the new group, the ECB did not make a manifest error of assessment in considering that neither the applicant nor the indirect proposed acquirers would be able to provide the necessary financial support to the target bank and to the new group.

159 In the fourth and last place, the applicant disputes the ECB's assessment, in paragraph 2.2.3 of the contested decision, that there were serious doubts as to the willingness of the indirect proposed acquirers to support the target bank if necessary.

160 In that regard, it should be noted, as the Commission submits, that the reasons set out in paragraphs 2.2.1 and 2.2.2 of the contested decision, relating to the financial soundness of the applicant and the indirect proposed acquirers, are in themselves capable of justifying the ECB's conclusion, referred to in paragraph 2.2.4 of that decision, that the proposed acquirers were not able to maintain a sufficiently sound financial structure in relation to the target bank and the new group.

161 Consequently, the applicant's argument directed against the ground that was included in paragraph 2.2.3 of the contested decision for the sake of completeness must be rejected as ineffective.

162 Moreover, it must be noted that, in order to conclude that there were serious doubts as to the indirect proposed acquirers' willingness to support the target bank if necessary, the ECB relied on the lack of a firm and irrevocable commitment to provide such support. In that regard, it is apparent from the response to the observations that the ECB relied on a statement by CR of 17 October 2018 and on a letter from him of 12 February 2019. It also took into consideration the substantial lack of financial support for the applicant in the recent past.

163 First, it is not apparent from the contested decision that the ECB criticised the proposed acquirers for having undertaken to support the new group only in the event of crisis.

164 Secondly, in the statement of 17 October 2018, CR indicated that his willingness and that of his family to continue to support the applicant and its group in the future were 'fully conditional' on the willingness of the Republic of Latvia to enter into an amicable settlement with him in order to address all the arbitrary and discriminatory problems which he and his family claimed to have encountered and for which he held the FCMC and other institutions responsible.

165 Contrary to what the applicant submits, the ECB, relying on the statement referred to in paragraph 164 above, did not criticise CR for having requested that the alleged arbitrary and discriminatory regulatory treatment be brought to an end. It merely found that, according to that statement, the support of CR and his family for the applicant and for the group of which it was a part was conditional. In that regard, the ECB correctly argues that the conclusion of an amicable settlement sought by CR had a high degree of uncertainty.

166 Furthermore, the ECB noted that, according to a letter from CR of 12 February 2019, he and his family were prepared to provide financial support to the target bank 'if this [were] appropriate'. The use of that expression could validly be regarded by the ECB, in the light of the statement referred to in paragraph 164 above, as a reservation expressed by CR and his family as to their willingness to support the target bank in the event of crisis.

167 Thirdly, the applicant states that CR intended to finance a significant part of the proposed acquisition through a share exchange agreement concluded between himself and certain shareholders of the target bank, which is akin to a capital contribution.

168 However, that fact is not sufficient to find that CR was necessarily prepared to support the target bank and the new group in the future.

169 It should be noted that the applicant does not dispute the consideration in paragraph 2.2.3 of the contested decision, which is, however, of particular importance in the ECB's reasoning, according to which the indirect proposed acquirers had demonstrated a substantial lack of financial support for the applicant in the recent past. In that regard, it is apparent from the response to the observations that the applicant's shareholders, in particular CR, have not provided capital to address the exceeding of the large exposure limit, which has persisted since March 2016. Furthermore, as the ECB states in the defence, the resolution of the applicant's exceeding of the limit for transactions with related parties caused by the grant of a payment deferral to CR for the purchase of a former Russian subsidiary of the applicant, depended primarily on CR's willingness to bring forward the date of that deferred payment.

170 Consequently, the ECB did not make a manifest error of assessment in finding that there were serious doubts as to the willingness of the indirect proposed acquirers to support the target bank if necessary.

171 It follows from the foregoing that the applicant is not entitled to submit that the ECB infringed Article 23 of Directive 2013/36 in taking the view that the criterion of financial soundness of the proposed acquirers was not satisfied.

(b) The criterion of compliance with prudential requirements

172 It follows from Article 56 of Regulation 192 that the FCMC is to assess whether the bank concerned meets the criterion of compliance with prudential requirements by taking into account, inter alia, that bank's ability to comply with those requirements as regards capital, liquidity, large exposure limits, internal control, risk management and compliance, on the date of the assessment of the notification and after the acquisition of a qualifying holding.

173 The applicant submits that the ECB does not conclude that the proposed acquisition would have a negative effect, whether for the applicant or for the target bank. The applicant relies on paragraph 13.1 of the Joint Guidelines, according to which the proposed acquisition should not adversely affect the target undertaking's compliance with prudential requirements. It adds that the proposed acquisition has positive effects.

174 However, compliance with the prudential requirements criterion must be assessed not from the perspective of the proposed acquirer, but from the perspective of the credit institution to which the acquisition relates, as follows from the wording of Article 23(1)(d) of Directive 2013/36, as transposed into Latvian law by Article 29(5)(4) of the Latvian Law on Credit Institutions. Moreover, that is not disputed by the applicant.

175 Consequently, even if it is apparent from the contested decision that the proposed acquisition would have positive effects on the applicant's capital, that does not support the conclusion that the target bank would comply with prudential requirements.

176 Furthermore, it is apparent from the contested decision that compliance with the prudential requirements criterion must be assessed not only from the perspective of the target bank, but also from the perspective of the new group. Nor does the applicant dispute this.

177 Paragraph 13.7 of the Joint Guidelines provides, moreover, that the group of which the target undertaking will become a part must be adequately capitalised.

178 Contrary to what the applicant submits, it is apparent from the contested decision that, even if the proposed acquisition would not have an immediate negative impact on compliance with the capital and liquidity requirements of the target bank alone, that acquisition would have a negative impact on the target bank's ability to address its weaknesses as regards compliance with prudential requirements.

179 In that regard, the applicant does not dispute that, in view of the fact that the business plan did not correct the applicant's weaknesses in terms of governance and internal control, there were serious doubts as to its ability to implement a sound system of governance and internal control at target-bank level.

180 Above all, the applicant does not dispute certain grounds of the contested decision. According to those grounds, first, the new group would probably fail to comply with capital requirements, irrespective of the scenario envisaged by the business plan, it being stated, which is also not disputed, that the unfavourable scenarios were more realistic than the base scenario. Secondly, given the target bank's significant net losses in 2017 and 2018 and the deficiencies identified in that bank's internal control and anti-money laundering system, the new group would have a high risk profile. Thirdly, the new group would be exposed to a high level of credit risk and would breach the large exposure limits. Fourthly, in view of the fact that the business plan did not

correct the weaknesses in the governance of the applicant and the target bank, there were serious doubts as to the new group's ability to ensure a sound system of governance and internal control. Fifthly and finally, the proposed acquirers' strategy was unclear, particularly as regards the organisation of the new group during the period up to 18 months between completion of the acquisition and the merger, since the business plan had significant flaws in terms of internal consistency, readability and the description of the planned actions, which increased doubts as to the overall credibility of the acquisition.

181 Consequently, the applicant has not demonstrated that the proposed acquisition would have positive effects for the target bank or, in any event, for the new group. The applicant does not even claim that the new group would have sufficient capitalisation, as referred to in paragraph 13.7 of the Joint Guidelines.

182 Therefore, in view of, in particular, the serious doubts as to the new group's ability to comply with the applicable prudential requirements, the ECB did not make a manifest error of assessment in concluding that the criterion of compliance with prudential requirements was not satisfied and, therefore, the ECB did not infringe Article 23 of Directive 2013/36, as transposed into Latvian law.

(c) The failure to take into account the other assessment criteria and the existence of reasonable grounds to oppose the proposed acquisition

183 In the first place, it follows from Article 23(2) of Directive 2013/36 that the competent authorities may oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 of that article.

184 That provision does not require the competent authority, when opposing the acquisition of a credit institution, to examine, in its decision, all the criteria set out in Article 23(1) of Directive 2013/36.

185 On the contrary, the competent authority may oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of one or more of the criteria referred to in Article 23(1) of Directive 2013/36.

186 That interpretation is consistent with the objective of Article 23 of Directive 2013/36, which is to ensure the sound and prudent management of the credit institution in which an acquisition is proposed.

187 As the ECB submits, in the light of the content of the criteria set out in Article 23(1) of Directive 2013/36, the assessment that there is an undermining of the objective of sound and prudent management of the credit institution in which an acquisition is proposed may be made in the light of only one of those criteria.

188 That interpretation is, moreover, supported by paragraphs 11.3, 12.3, 14.2, 14.4 and 14.7 of the Joint Guidelines, according to which the competent authority should oppose the proposed acquisition on the basis of certain elements relating to only one of the criteria referred to in Article 23(1) of Directive 2013/36.

189 In the present case, by opposing the proposed acquisition in the light of the criteria of financial soundness and compliance with prudential requirements, without examining the other criteria referred to in Article 23(1) of Directive 2013/36, the ECB therefore did not infringe Article 23(1) and (2).

190 In the second place, even if the proposed acquisition had had the effect of improving the applicant's capital situation and if it had not had an immediate negative effect on compliance with the prudential requirements applicable only to the target bank in relation to solvency and liquidity, the fact remains that, on the one hand, the proposed acquirers were not able to maintain, for the foreseeable future, a sound financial structure for the target bank and the new group, and, on the other hand, there were serious doubts as to the ability of the target bank and the new group to comply with prudential requirements.

191 Consequently, the elements on which the contested decision is based as regards the financial soundness criterion and the criterion of compliance with prudential requirements constituted reasonable grounds for opposing the proposed acquisition.

192 The third plea in law must therefore be rejected as unfounded.

5. The fourth plea in law, alleging infringement of the principle of proportionality

193 The applicant submits that the contested decision infringes the principle of proportionality. That decision does not contain any analysis of proportionality. A less intrusive approach to achieve the objective of ensuring full compliance with prudential requirements would be to authorise the proposed acquisition and then adopt appropriate supervisory measures. Such an approach would reduce an alleged non-compliance with prudential requirements.

194 The ECB disputes that line of argument.

195 The principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims (judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 50, and of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 206).

196 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 judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 53 and the case-law cited).

197 The applicant submits that it would have been preferable for the ECB not to oppose the proposed acquisition and to adopt appropriate supervisory measures following that acquisition.

198 However, the applicant does not provide any details as to the nature of the supervisory measures that would have been appropriate to address the deficiencies pointed out by the ECB as regards the financial soundness of the proposed acquirers and the target bank's ability to comply with and continue to comply with prudential requirements, in order to ensure the sound and prudent

management of the target bank. The Court also notes that it is apparent from the documents in the file that, specifically, the applicant was already not complying with the applicable prudential requirements.

199 Consequently, it is not apparent from the file that there were appropriate measures that were less onerous than the contested decision and capable of ensuring the objective laid down in Article 23(1) of Directive 2013/36, namely to ensure the sound and prudent management of the target bank.

200 In those circumstances, since, as noted in paragraph 191 above, there were reasonable grounds to oppose the proposed acquisition, and also taking into account the broad discretion enjoyed by the ECB, the applicant is not entitled to submit that the contested decision infringes the principle of proportionality.

201 The fourth plea in law must therefore be rejected as unfounded.

6. The fifth plea in law, alleging a failure to take into account the discretionary nature of a decision adopted under Article 15(3) of Regulation No 1024/2013

202 The applicant submits that the contested decision fails to take account of the discretionary nature of a decision to oppose an acquisition. The ECB assumed that it was required to oppose the proposed acquisition where 'certain' criteria set out in Article 23(1) of Directive 2013/36 were not satisfied, by interpreting those criteria as requirements, and not as part of an overall assessment. The applicant was deprived of the impartial exercise of the competent authority's discretion to which the applicant is entitled under Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter').

203 The ECB, supported by the Commission, disputes the applicant's line of argument.

204 Thus, as stated in paragraph 185 above, the competent authority may oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of one or more of the criteria referred to in Article 23(1) of Directive 2013/36.

205 As stated in paragraph 144 above, the ECB has a broad discretion when it adopts, as in the present case, a measure relating to the prudential supervision of a credit institution.

206 It does not follow from the contested decision that the ECB considered that it did not enjoy a broad discretion.

207 In particular, although the ECB considered, in paragraphs 2.4 and 2.5 of the contested decision, that neither the criterion of financial soundness nor that of compliance with prudential requirements was met, that does not mean that it considered itself not to have a broad discretion to assess compliance with each of those criteria.

208 As regards the argument that the applicant was deprived of the impartial exercise of the competent authority's discretion, under Article 41 of the Charter, every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the European Union.

209 In that regard, the applicant has not put forward, in the context of the fifth plea, any evidence capable of demonstrating that the contested decision is vitiated by a lack of impartiality.

210 Consequently, the applicant is not entitled to submit that the ECB disregarded the broad discretion available to it when adopting the contested decision or that, in so doing, it infringed the right to good administration, guaranteed by Article 41 of the Charter.

211 The fifth plea in law must be rejected as unfounded.

7. The seventh plea in law, alleging infringement of the principles of the protection of legitimate expectations and legal certainty

212 The applicant submits that the ECB does not set out any clear criterion as to the type of consolidation that it authorises in the banking sector. It does not define the precise requirements to be met in view of its interpretation of the criteria of financial soundness and compliance with prudential requirements. Those conditions cannot mean that unlimited amounts may be deducted from the funds of the proposed acquirer in order to meet the target bank's potential financing needs or that continuing regulatory shortcomings prevent an acquisition even if that acquisition has significant positive effects. The ECB should have informed the applicant of its expectations, for example as regards the amount of funds necessary to meet the financial soundness requirement.

213 The ECB disputes that line of argument.

214 The principle of legal certainty requires, inter alia, that rules of law be clear, precise and predictable in their effect, especially where they may have negative consequences for individuals and undertakings (see judgment of 30 April 2019, *Italy* v *Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 111 and the case-law cited).

215 The right to rely on the principle of the protection of legitimate expectations, which is the corollary of the principle of legal certainty, extends to any individual in a situation where European Union authorities have caused him or her to entertain legitimate expectations. In whatever form it is given, information which is precise, unconditional and consistent and comes from authorised and reliable sources constitutes assurances capable of giving rise to such expectations. However, a person may not plead infringement of the principle of the protection of legitimate expectations unless he or she has been given precise assurances by the administration (judgment of 30 April 2019, *Italy* v *Council (Fishing quota for Mediterranean swordfish)*, C-611/17, EU:C:2019:332, paragraph 112).

216 In the present case, the contested decision is based on the criteria of financial soundness and compliance with prudential requirements laid down in Directive 2013/36, as transposed into Latvian law, and clarified by the Joint Guidelines.

217 Those criteria must be regarded as clear, precise and predictable within the meaning of the case-law cited in paragraph 214 above.

218 Contrary to what the applicant submits, as already noted in paragraph 154 above, the ECB did not require, in its analysis of the financial soundness criterion, that 'unlimited' amounts may be deducted from the funds of proposed acquirers in order to meet the target bank's potential financing needs. Moreover, as noted in paragraph 130 above, the ECB set out the reasons why,

despite the proposed acquisition's positive effects on the applicant's capital ratios, the criterion of compliance with prudential requirements was not met. In addition, the ECB is not required, before adopting a decision on the acquisition of a qualifying holding, to inform the proposed acquirer of the amount of funds necessary for the ECB to authorise that acquisition in the light of the financial soundness criterion.

219 As regards the principle of the protection of legitimate expectations, it is sufficient to note, as the ECB submits, that the applicant does not claim that the ECB gave it assurances capable of giving rise to legitimate expectations on its part.

220 Consequently, in accordance with the case-law cited in paragraph 215 above, the applicant is not entitled to submit that the ECB infringed the principle of the protection of legitimate expectations.

221 The seventh plea in law must therefore be rejected as being unfounded.

8. The eighth plea in law, alleging a failure to acknowledge the responsibility of the ECB and of the FCMC

222 The applicant submits that the contested decision is incorrect because the ECB failed to take account of its own responsibility and that of the FCMC for the loss of confidence in the regulatory process and for the consequences which that has for the financing of the applicant and the financing of the new group.

223 The applicant submits that serious concerns about corruption led to a loss of confidence in the supervisory process in Latvia and within the Single Supervisory Mechanism (SSM). Those concerns are linked to A's attempts to obtain bribes from the applicant and from the indirect proposed acquirers and are linked to the unfair regulatory treatment associated with those attempts. CR reported those acts of corruption in 2017 to the United Kingdom authorities and then to the Latvian authorities. The applicant also refers to the arbitration proceedings set out in paragraph 5 above. External observers (including the Organisation for Economic Cooperation and Development (OECD) and the Commission) agree that banking supervision in Latvia is distorted as a result of widespread corrupt practices. The allegations concerning A were corroborated by similar conduct reported by other persons. As regards the dispute between the ECB and the Republic of Latvia, and between A and the Republic of Latvia, which have been brought before the Court of Justice, it must be presumed that the ECB has already received evidence concerning A's misconduct. The reprehensible acts attributed to him are sufficiently serious for him to be relieved of his duties even before a final criminal conviction has been handed down.

224 The applicant submits that, although the ECB defends its independence against any interference by the Latvian authorities, it does not fulfil its role of ensuring that the SSM is not distorted by corruption, even though that role is all the more essential because the ECB and its officials enjoy special protection and privileges vis-à-vis the competent national law enforcement authorities. The ECB is under an obligation to carry out investigations in the event of corruption or any other form of potential misconduct.

225 The applicant submits that it and the indirect proposed acquirers are subject to severe regulatory treatment for having reported corruption issues and for having demanded a proactive approach. This is also reflected in the ECB's criticism of the fact that CR's commitment to finance the applicant was accompanied by an insistence that the regulatory process not be distorted by corruption.

226 The applicant submits that the ECB's approach, which requires additional investment in the applicant, but deters any investment by adopting a hostile attitude and refuses to acknowledge the legitimacy of requests for observance of the rule of law, is not that of an impartial administration. That approach infringes the adage *nemo auditur propriam turpitudinem allegans*, Article 23 of Directive 2013/36 and Article 41 of the Charter.

227 The ECB disputes the applicant's line of argument.

228 The applicant submits that, by failing to acknowledge the responsibility of the ECB and the FCMC for the loss of confidence in the regulatory process, the contested decision infringes the adage *nemo auditur propriam turpitudinem allegans*, Article 23 of Directive 2013/36 and Article 41 of the Charter.

229 In the first place, as regards the nature of the acts of corruption in question, it must be stated that the allegation that banking supervision in Latvia is distorted by 'widespread' corruption is not supported by further details to enable the scope of that corruption to be assessed.

230 It should also be noted that, first, the criminal investigation which gave rise to A being charged concerns not the applicant, but a third-party Latvian bank, and, secondly, as regards the acts of corruption complained of by CR, the applicant states without further details that the investigation is ongoing.

231 In the second place, according to the adage *nemo auditur propriam turpitudinem allegans*, no person may take advantage of his or her own misconduct.

232 In order to invoke the adage *nemo auditur propriam turpitudinem allegans*, it is necessary to establish that wrongful conduct attributable to the ECB has been committed (see, by analogy, judgment of 20 January 2021, *ABLV Bank* v *SRB*, T-758/18, EU:T:2021:28, paragraph 170).

233 Although the applicant considers that the ECB was under an obligation to conduct an investigation into the acts of corruption complained of by CR, the ECB is fully entitled to argue that it is not competent itself to conduct an investigation into such acts and that it cooperates in that regard with the national competent authorities.

234 Neither the fact that the ECB is responsible for ensuring the effective and consistent functioning of the SSM nor the fact that ECB officials enjoy privileges and immunities vis-à-vis the national services competent in criminal matters has the effect of giving the ECB competence to conduct an investigation into acts of corruption of which the Governor of a national central bank is allegedly guilty.

235 In that regard, the Court of Justice has held that the immunity from legal proceedings provided for in Article 11(a) of Protocol (No 7) on the privileges and immunities of the European Union does not apply where the beneficiary of that immunity is implicated in criminal proceedings in respect of acts which were not performed in the context of the duties which he or she carries out on behalf

of an EU institution (see, to that effect, judgment of 30 November 2021, *LR Ģenerālprokuratūra*, C-3/20, EU:C:2021:969, paragraph 97). It has stated that acts of corruption fall necessarily outside the bounds of the duties of an official or other servant of the European Union, as well as of those of a governor of a central bank of a Member State sitting on an organ of the ECB (judgment of 30 November 2021, *LR Ģenerālprokuratūra*, C-3/20, EU:C:2021:969, paragraph 67).

236 Furthermore, even if the ECB made an error by not conducting an investigation into the acts of corruption complained of by CR or into the remarks made by A regarding the applicant, it has not been demonstrated that that error was such as to render unlawful the contested decision. That decision does not stipulate whether it is appropriate to conduct such an investigation, but concerns the application to acquire a qualifying holding.

237 Consequently, the applicant is not entitled to seek annulment of the contested decision on the ground that the ECB did not conduct an investigation into the acts of corruption complained of by CR.

238 In the third place, as regards the alleged unfair regulatory treatment associated with the acts of corruption which it complains of, the applicant does not explain precisely which administrative measures are, in its view, vitiated by illegality or, in any event, how the unlawfulness of those measures, even if proved, is such as to render the contested decision itself unlawful.

239 Although the applicant stated, in the context of the second plea in law, that it had disputed the total SREP capital requirement set for 2019, that fact does not call into question the finding that the total capital ratio of the new group envisaged for the end of 2019 was only 12.91%, that is to say, a level lower than OCR which the applicant had to comply with for 2018, as stated in paragraph 116 above.

240 In the fourth and last place, the contested decision was not adopted on the ground that the applicant reported acts of corruption or requested an investigation into those acts.

241 In particular, contrary to what the applicant submits, as noted in paragraph 165 above, the ECB did not criticise CR for having requested that the alleged arbitrary and discriminatory regulatory treatment be brought to an end.

242 Consequently, the applicant is not entitled to submit that, in the absence of acknowledgement of the responsibility of the ECB and the FCMC, the contested decision infringes the adage *nemo auditur propriam turpitudinem allegans*, Article 23 of Directive 2013/36 and Article 41 of the Charter.

243 The eighth plea in law must be rejected as unfounded.

244 It follows from all of the foregoing that the action must be dismissed.

V. Costs

245 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 pay the ECB's costs, in accordance with the form of order sought by the ECB.

246 The Commission must bear its own costs, pursuant to Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders PNB Banka AS 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.**

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 7 December 2022.

E. Coulon S. Papasavvas
Registrar President