Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

2 October 2019*

(Appeal – Economic and monetary policy – Article 127(6) TFEU – Regulation (EU) No 1024/2013 – Article 4(1)(g) – Prudential supervision of credit institutions on a consolidated basis – Regulation (EU) No 468/2014 – Article 2(21)(c) – Regulation (EU) No 575/2013 – Article 10 – Supervised group – Institutions permanently affiliated to a central body)

In Joined Cases C-152/18 P and C-153/18 P,

APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 February 2018,

Crédit mutuel Arkéa, established in Le Relecq-Kerhuon (France), represented by H. Savoie, avocat,

appellant,

the other parties to the proceedings being:

European Central Bank (ECB), represented by K. Lackhoff, R. Bax and C. Olivier, acting as Agents, and by P. Honoré, avocat,

defendant at first instance,

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

intervener at first instance,

supported by:

Confédération nationale du Crédit mutuel, established in Paris (France), represented by M. Grégoire and C. De Jonghe, avocats,

intervener in the appeal (C-152/18 P),

and

Crédit mutuel Arkéa, established in Le Relecq-Kerhuon (France), represented by H. Savoie, avocat,

appellant,

the other parties to the proceedings being:

* Language of the case: French.

European Central Bank (ECB), represented by K. Lackhoff, R. Bax and C. Olivier, acting as Agents, and by P. Honoré, avocat,

defendant at first instance,

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Confédération nationale du Crédit mutuel, established in Paris (France), represented by M. Grégoire and C. De Jonghe, avocats,

intervener in the appeal (C-152/18 P),

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, C. Toader, A. Rosas and L. Bay Larsen, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 18 June 2019,

gives the following

Judgment

1 By its appeals, Crédit mutuel Arkéa ('CMA') seeks to have set aside the judgments of the General Court of the European Union of 13 December 2017, *Crédit mutuel Arkéa* v *ECB* (T-712/15, 'the first judgment under appeal', EU:T:2017:900), and of 13 December 2017, *Crédit mutuel Arkéa* v *ECB* (T-52/16, 'the second judgment under appeal', EU:T:2017:902) (together, 'the judgments under appeal'), by which that court dismissed its actions for the annulment, respectively, of Decision ECB/SSM/2015 – 9695000CG7B84NLR5984/28 of the European Central Bank (ECB) of 5 October 2015 setting out the prudential requirements for the Crédit mutuel group ('the first contested decision'), and Decision ECB/SSM/2015 – 9695000CG7B84NLR5984/40 of the ECB of 4 December 2015 setting out the prudential requirements for the Crédit mutuel group ('the second contested decision') (together, 'the contested decisions').

Legal context

European Union law

Regulation (EU) No 575/2013

2 Article 10(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1), that article being headed 'Waiver for credit institutions permanently affiliated to a central body', provides:

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

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

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

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

…'

3 According to Article 11(4) of that regulation:

'Where Article 10 is applied, the central body referred to in that Article shall comply with the requirements of Parts Two to Eight on the basis of the consolidated situation of the whole as constituted by the central body together with its affiliated institutions'.

Regulation (EU) No 1024/2013

4 Recitals 16, 26, 30 and 65 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), state:

'(16) The safety and soundness of large credit institutions is essential to ensure the stability of the financial system. …

…

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

…

(30) The ECB should carry out the tasks conferred on it with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system of the Union as well as of individual participating Member States and the unity and integrity of the internal market …

…

(65) …The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. …'

5 The first paragraph of Article 1 of that regulation provides:

'This Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage'.

6 Article 4(1) of that regulation provides:

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

…

(g) to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors without prejudice to the participation of national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State;

…'

7 Pursuant to Article 6(1) of that regulation, the ECB is to carry out its tasks within a single supervisory mechanism ('SSM') composed of the ECB and national competent authorities, and is to be responsible for the effective and consistent functioning of that mechanism.

8 Article 24 of Regulation No 1024/2013 is worded as follows:

'1. The ECB shall establish an Administrative Board of Review for the purposes of carrying out an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation after a request for review submitted in accordance with paragraph 5. The scope of the internal administrative review shall pertain to the procedural and substantive conformity with this Regulation of such decisions.

…

5. Any natural or legal person may in the cases referred to in paragraph 1 request a review of a decision of the ECB under this Regulation which is addressed to that person, or is of a direct and individual concern to that person. A request for a review against a decision of the Governing Council as referred to in paragraph 7 shall not be admissible.

6. Any request for review shall be made in writing, including a statement of grounds, and shall be lodged at the ECB within one month of the date of notification of the decision to the person requesting the review, or, in the absence thereof, of the day on which it came to the knowledge of the latter as the case may be.

7. After ruling on the admissibility of the review, the Administrative Board of Review shall express an opinion within a period appropriate to the urgency of the matter and no later than two months from the receipt of the request and remit the case for preparation of a new draft decision to the Supervisory Board. The Supervisory Board shall take into account the opinion of the Administrative Board of Review and shall promptly submit a new draft decision to the Governing Council. The new draft decision shall abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended decision. The new draft decision shall be deemed adopted unless the Governing Council objects within a maximum period of ten working days.

…

9. The opinion expressed by the Administrative Board of Review, the new draft decision submitted by the Supervisory Board and the decision adopted by the Governing Council pursuant to this Article shall be reasoned and notified to the parties.

10. The ECB shall adopt a decision establishing the Administrative Board of Review's operating rules.

…'

Regulation (EU) No 468/2014

9 According to recital 9 of Regulation (EU) No 468/2014 of the European Central Bank 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 ('the SSM Framework Regulation') (OJ 2014 L 141, p. 1):

'As a result, this Regulation further develops and specifies the cooperation procedures established in the SSM Regulation [No 1024/2013] between the ECB and the NCAs within the SSM as well as, where appropriate, with the national designated authorities, and thereby ensures the effective and consistent functioning of the SSM'.

10 Article 2(21) of that regulation provides:

'For the purposes of this Regulation, the definitions contained in … [Regulation No 1024/2013] shall apply, unless otherwise provided for, together with the following definitions:

…

21. "supervised group" means any of the following:
(a) a group whose parent undertaking is a credit institution or financial holding company that has its head office in a participating Member State;

…
(c) supervised entities each having their head office in the same participating Member State provided that they are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation […] No 575/2013 and which is established in the same participating Member State'.

Decision 2014/360/EU

11 Decision 2014/360/EU of the European Central Bank of 14 April 2014 concerning the establishment of an Administrative Board of Review and its Operating Rules (OJ 2014 L 175, p. 47) creates the Administrative Board of Review referred to in Article 24 of Regulation No 1024/2013.

12 Article 7(1) of that decision provides:

'Any natural or legal person to whom a decision of the ECB under Regulation … No 1024/2013 is addressed, or to whom such decision is of direct and individual concern, who wishes to request an internal administrative review … shall do so by filing a written notice of review with the Secretary, identifying the contested decision. The notice of review shall be submitted in one of the official languages of the Union'.

French law

13 Article L. 511-30 of the French code monétaire et financier (monetary and financial code) provides that, for the purposes of applying the provisions of that code relating to credit institutions and finance companies, the Confédération nationale du Crédit mutuel (national confederation of the Crédit mutuel group) ('CNCM') is to be regarded as a central body.

14 Article L. 511-31 of that code provides, inter alia, that the central bodies are to represent the credit institutions and finance companies which are affiliated to them, that they are to be responsible for ensuring the cohesion of their network and the smooth running of the institutions and companies affiliated to them, and that, to that end, they are to take any measures necessary, in particular, to ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole.

The facts giving rise to the dispute

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

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

17 By letter of 19 September 2014, CMA submitted to the ECB an analysis to the effect that it was impossible for it to be subject to prudential supervision by the ECB through the CNCM. By letter of 10 November 2014, the ECB stated that it would bring the matter before the competent French authorities.

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

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

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

21 On 17 July 2015 CMA requested a review of that decision pursuant to Article 24 of Council Regulation No 1024/2013, read in conjunction with Article 7 of Decision 2014/360. A hearing was held on 31 August 2015 before the Administrative Board of Review.

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

23 As regards the first ground of complaint, in the first place, the Administrative Board of Review recalled that the ECB, by decision of 1 September 2014, had considered the Crédit mutuel group to be a significant group subject to prudential supervision, that CMA was a member of that group and that the CNCM was the highest level of consolidation within it. In the second place, the Board pointed out that the concept of 'central body' in Article 2(21)(c) of Regulation No 468/2014 and Article 10 of Regulation No 575/2013 was not defined by EU law and that there was no requirement for the central body to be a credit institution. In the third place, the Administrative Board of Review observed that it was not necessary for the ECB to have the complete set of supervisory or penalty powers in relation to the parent entity of a group in order to exercise prudential supervision on a consolidated basis. In the fourth place, the Board reiterated that, prior to the transfer of that power to the ECB, the Crédit mutuel group was subject to prudential supervision on a consolidated basis by the competent French authority, namely the Autorité de contrôle prudentiel et de résolution (Authority for Prudential Supervision and Resolution, France), through the CNCM.

24 As regards the second ground of complaint, the Administrative Board of Review found that the Crédit mutuel group satisfied the conditions laid down in Article 10(1) of Regulation No 575/2013, to which Article 2(21)(c) of Regulation No 468/2014 refers. In the first place, the Administrative Board of Review considered that the status of the CNCM as an association did not preclude the possibility that it and its affiliated institutions should have joint and several liability. In the second place, it stated that the accounts of the Crédit mutuel group as a whole were drawn up on a consolidated basis. In the third place, it took the view that the ECB had been right to find that the CNCM had the power to issue instructions to the management of its affiliated institutions.

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

26 Pursuant to Article 24(7) of Regulation No 1024/2013, the first contested decision repealed and replaced the decision of 17 June 2015, while having the same content.

27 The second contested decision set new prudential requirements for the Crédit mutuel group and its constituent entities. Point 1 of that decision concerned prudential requirements applicable to the Crédit mutuel group on a consolidated basis and point 3 thereof concerned those specifically applicable to CMA.

The procedure before the General Court and the judgments under appeal

28 By applications lodged at the Registry of the General Court on 3 December 2015 and 3 February 2016, CMA brought actions for the annulment of the first contested decision and the second contested decision respectively.

29 In support of each of its two actions, CMA put forward three pleas in law, only the first two of which are affected by the present appeals.

30 By its first two pleas in law, CMA, in essence, challenged the lawfulness of Article 2(1) of, and Annex I to, the first contested decision and the lawfulness of point 1 of the second contested decision, inasmuch as those provisions organised the consolidated prudential supervision of the Crédit mutuel group through the CNCM. In that connection, CMA claimed that, since the CNCM did not have credit institution status, it could not be the subject of prudential supervision by the ECB and argued that the ECB had wrongly held that there was a 'group' for prudential supervision purposes.

31 By the judgments under appeal, the General Court dismissed the actions brought by CMA.

Forms of order sought and procedure before the Court of Justice

32 By its appeals, CMA claims that the Court should set aside the judgments under appeal.

33 The ECB contends that the Court should:

– dismiss the appeals as being inadmissible, at least as regards the grounds and arguments set out in paragraphs 100 to 109 thereof;

– ask CMA, if necessary on the basis of Article 64 of the Rules of Procedure of the Court of Justice, to submit any refinancing agreement entered into by CMA with its subsidiaries;

– dismiss the appeals as being unfounded as to the remainder;

– uphold the judgments under appeal; and

– order CMA to pay the costs.

34 The European Commission contends that the Court should:

– dismiss the appeals; and

– order CMA to pay the costs.

35 By decision of 21 March 2018, the President of the Court decided to join Cases C-152/18 P and C-153/18 P for the purposes of the written and oral procedures and the judgment.

36 By document lodged at the Court Registry on 7 June 2018, the CNCM, acting on the basis of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, requested leave to intervene in these cases in support of the forms of order sought by the ECB and the Commission.

37 By order of the President of the Court of 20 September 2018, *Crédit Mutuel Arkéa* v *ECB* (C-152/18 P and C-153/18 P, not published, EU:C:2018:765), that request was granted.

The appeals

38 In support of its appeals, CMA raises two grounds, worded identically in each case, which it is appropriate to examine together.

39 As a preliminary point, with regard to the note, produced as an annex to each of these appeals, by which a university professor, at CMA's request, analyses the judgments under appeal from the point of view of banking regulation and supervision, and the admissibility of which is contested by the Commission, it should be recalled that the purely probative and instrumental purposes of the annexes means that, in so far as these contain elements of law on which certain grounds expressed in the appeal are based, those elements must be set out in the actual body of that appeal or, at the very least, be sufficiently identified in the appeal (see judgment of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 99 and 100, and order of 7 August 2018, *Campailla* v *European Union*, C-256/18 P, not published, EU:C:2018:655, paragraph 34).

40 As the Advocate General noted in point 31 of his Opinion, CMA refers to that note in very general terms in the introductory part of its appeals, without expressly linking it to any of the grounds raised in support of those appeals and without specifically indicating which aspects of that note form the basis of any of those grounds.

41 Consequently, the plea raised by the Commission should be upheld and the content of the note in question and the reference made to it in the appeals should be declared to be inadmissible.

42 Furthermore, as regards the ECB's application for measures of inquiry, it is sufficient to note that this does not meet the requirement laid down in Article 174 of the Rules of Procedure to the effect that the response must seek to have the appeal allowed or dismissed, in whole or in part. That application must therefore be rejected as being inadmissible.

The first ground of each appeal

43 By the first ground which it puts forward in support of each of its appeals, CMA claims that the General Court committed an error of law in finding that Article 2(21)(c) of Regulation No 468/2014 and Article 10 of Regulation No 575/2013 allow the ECB to organise the consolidated prudential supervision of institutions affiliated to a central body even where the central body does not have credit institution status.

44 Those grounds are divided into two limbs.

The first limb of the first ground of each appeal

– Arguments of the parties

45 By the first limb of the first ground, CMA claims that the General Court committed an error of law in finding that Article 2(21)(c) of Regulation No 468/2014 allows the ECB to organise the consolidated prudential supervision of institutions affiliated to a central body without the need for that central body to have credit institution status.

46 In the first place, CMA submits that, if the General Court had interpreted that provision in accordance with Article 127(6) TFEU and Article 1 of Regulation No 1024/2013, relating to the specific tasks entrusted to the ECB in connection with the prudential monitoring and supervision of 'credit institutions', it would have had to take the view that the central body referred to in Article 2(21)(c) of Regulation No 468/2014 must necessarily have credit institution status in order for the ECB to be able to exercise consolidated prudential supervision through that central body.

47 In the second place, CMA contests the General Court's assessment, in paragraph 89 of the first judgment under appeal and paragraph 88 of the second judgment under appeal, that its approach, if followed, would result in the fragmentation of prudential supervision, contrary to the aims of both Regulation No 1024/2013 and Regulation No 468/2014.

48 In that regard, CMA argues, in essence, that entities not having credit institution status are not covered by the concept of 'supervised group' as defined in Article 2(21)(c) of Regulation No 468/2014, and that the inclusion of an association such as the CNCM, which does not have credit institution status, within the group subject to prudential supervision by the ECB is not justified by the aim pursued by that provision.

49 In the third place, CMA considers that the General Court committed an error of law in its application of Article 2(21)(c) of Regulation No 468/2014, inasmuch as the General Court found that it was impossible for the ECB to impose penalties on the central bodies referred to in that provision but did not infer from that finding that it was essential for such a central body to have credit institution status.

50 According to CMA, since effective supervision is conditional upon the existence of a power to penalise and that power can be exercised only in relation to credit institutions, that provision is applicable only to central bodies with credit institution status and the fact that the ECB can penalise credit institutions affiliated to such central bodies is immaterial in that regard.

51 The ECB, the Commission and the CNCM contest that line of argument.

– Findings of the Court

52 Article 127(6) TFEU, which is the legal basis on which Regulation No 1024/2013 was adopted, provides that the Council of the European Union may confer on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions, with the exception of insurance undertakings.

53 While it is true that the wording of that provision refers to 'credit institutions' and 'other financial institutions', it is important to determine the scope of the power provided for in that provision, account being taken of the background to that provision and the objectives it pursues.

54 In that regard, it should be noted that Article 127 TFEU appears in Chapter 2, entitled 'Monetary policy', of Title VIII of Part Three of the FEU Treaty and that it establishes the objectives and fundamental tasks of the European System of Central Banks (ESCB) and the ECB.

55 As the Advocate General stated in points 55 and 56 of his Opinion, the tasks relating to prudential banking supervision that are referred to in Article 127(6) TFEU are performed with the objective of ensuring the safety and soundness of credit institutions, in particular the major credit institutions and banking groups, so as to help ensure the stability of the EU financial system as a whole.

56 What is more, the pursuit of those objectives is explicitly mentioned in recitals 16, 26, 30 and 65 of Regulation No 1024/2013 and the first paragraph of Article 1 of that regulation.

57 In particular, it follows from recital 26 of Regulation No 1024/2013 that, in order to ensure the safety and soundness of credit institutions, it is important to put in place specific supervisory arrangements to mitigate the risks to the safety and soundness of a credit institution, which may arise both at the level of individual credit institutions and at the level of banking groups or the financial conglomerates to which they belong.

58 That recital states that, in addition to individual credit institutions, the ECB's tasks should also include supervision at the consolidated level.

59 In that regard, it should be recalled that Article 4(1)(g) of Regulation No 1024/2013, that article being headed 'Tasks conferred on the ECB', provides that the ECB is to be competent, inter alia, to carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States.

60 In accordance with Article 6(1) of that regulation, the ECB is to carry out that task within the SSM, composed of itself and national competent authorities, and is to be responsible for the effective and consistent functioning of the SSM.

61 As is clear from recital 9 of Regulation No 468/2014, the purpose of that regulation is to develop and specify the cooperation procedures established in Regulation No 1024/2013 between the ECB and the national competent authorities within the SSM, thereby ensuring the effective and consistent functioning of the SSM.

62 It is in that context that Article 2(21)(c) of Regulation No 468/2014 defines the concept of 'supervised group' as referring, inter alia, to supervised entities each having their head office in the same participating Member State, provided that they are permanently affiliated to a central body which supervises them under the conditions laid down in Article 10 of Regulation No 575/2013 and which is established in the same participating Member State.

63 Consequently, the General Court was correct to find, in paragraphs 58 to 64 of the first judgment under appeal and paragraphs 57 to 63 of the second judgment under appeal, that the prudential supervision of credit institutions belonging to banking groups on a consolidated basis has essentially two aims, namely, first, to enable the ECB to identify the risks likely to affect a credit institution which derive not from the institution itself but from the group of which it forms part, and, secondly, to ensure that the prudential supervision of the entities making up that group is not fragmented.

64 Moreover, it does not in any way follow from Article 127(6) TFEU that the 'central body' referred to in Article 2(21)(c) of Regulation No 468/2014 must have credit institution status.

65 On the contrary, as the Advocate General observed in points 62 to 64 of his Opinion, it is clear from the objectives pursued in conferring specific tasks relating to prudential supervision on the ECB, on the basis of Article 127(6) TFEU, that the ECB must be able to exercise prudential supervision on a consolidated basis over a group such as that referred to in Article 2(21)(c) of Regulation No 468/2014, irrespective of the legal form of the central body to which the entities forming part of that group are affiliated and provided that the conditions laid down in Article 10 of Regulation No 575/2013 are fulfilled.

66 If that were not the case, a banking group could evade prudential supervision on a consolidated basis by reason of the legal form of the entity acting as central body for that group and could therefore undermine the effective exercise of the aforementioned tasks by the ECB.

67 Consequently, Article 127(6) TFEU and Article 1 of Regulation No 1024/2013 do not preclude the ECB from exercising prudential supervision on a consolidated basis over a banking group whose central body does not have credit institution status, provided that the conditions laid down in Article 10(1) of Regulation No 575/2013 are fulfilled.

68 As regards, furthermore, CMA's argument that the General Court's assessment in paragraph 89 of the first judgment under appeal and paragraph 88 of the second judgment under appeal is vitiated by an error of law, suffice it to state that, according to the Court's settled case-law, arguments directed against grounds included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and are therefore ineffective (judgment of 13 December 2018, *European Union* v *Gascogne Sack Deutschland and Gascogne*, C-138/17 P and C-146/17 P, EU:C:2018:1013, paragraph 45 and the case-law cited).

69 As the ECB and the Commission have rightly argued, the aforementioned paragraphs are included purely for the sake of completeness, since they appear after the General Court, in paragraph 88 of the first judgment under appeal and paragraph 87 of the second judgment under appeal, correctly held that it is consistent with the aims of Regulations No 1024/2013 and No 468/2014 for a group to be classified as a 'supervised group' within the meaning of Article 2(21)(c) of Regulation No 468/2014, irrespective of whether or not the group's central body has the status of a credit institution.

70 What is more, the fact that paragraph 89 of the first judgment under appeal and paragraph 88 of the second judgment under appeal are included purely for the sake of completeness is confirmed by the use of 'furthermore' at the start of those paragraphs.

71 Consequently, CMA's argument criticising those paragraphs of the judgments under appeal must be dismissed as being ineffective.

72 Nor can CMA's argument, that the fact that it is impossible for the ECB to impose penalties on central bodies, as referred to in Article 2(21)(c) of Regulation No 468/2014, means that such a central body must have credit institution status, be accepted.

73 As the ECB and the Commission have stated, that argument rests on an analysis to the effect that the ECB's competence in matters of prudential supervision is conditional upon the existence of a power to penalise the entities forming the subject of that supervision.

74 It is true that, as the General Court itself pointed out in paragraph 91 of the first judgment under appeal and paragraph 90 of the second judgment under appeal, Article 18 of Regulation No 1024/2013 provides that the ECB may, for the purposes of carrying out the tasks conferred on it by that regulation in respect of prudential supervision, impose administrative pecuniary penalties on credit institutions, financial holding companies or mixed financial holding companies.

75 However, as the Advocate General emphasised in points 84 and 85 of his Opinion, it does not in any way follow from the applicable texts of EU law that the existence of a power to penalise an entity is a necessary condition of conferring on the ECB powers of prudential supervision over that entity, with the result that the exercise by the ECB of its competence in matters of prudential supervision on a consolidated basis over a group is not subject to the condition that the ECB has such a power to penalise an entity, such as a central body within the meaning of Article 2(21)(c) of Regulation No 468/2014, forming part of that group.

76 It follows that the General Court committed no error of law in finding that the absence on the part of the ECB of a power to penalise the central bodies referred to in that provision does not preclude the ECB from exercising prudential supervision on a consolidated basis over a group whose central body does not have credit institution status.

77 In those circumstances, in finding that Article 2(21)(c) of Regulation No 468/2014 cannot be interpreted as meaning, in itself, that a central body must have credit institution status, the General Court did not commit an error of law and the first limb of the first ground of each appeal must therefore be dismissed.

The second limb of the first ground of each appeal

– *Arguments of the parties*

78 By the second limb of the first ground of each appeal, CMA claims that, contrary to what the General Court held in the judgments under appeal, Article 10 of Regulation No 575/2013 means that, for the purposes of applying Article 2(21)(c) of Regulation No 468/2014, a 'central body' within the meaning of Article 10 must have credit institution status.

79 According to CMA, it follows from a consistent application of Article 10 of Regulation No 575/2013 and Article 11(4) of that regulation that, in so far as the requirements laid down in the latter provision are capable of being met only by a credit institution, a 'central body' within the meaning of Article 10 must implicitly but necessarily have credit institution status in order for the ECB to be able to exercise prudential supervision on a consolidated basis over the group concerned.

80 CMA argues that the General Court's interpretation of Article 10(1)(b) of Regulation No 575/2013 is not consistent with the wording of that provision, since, in so far as the latter refers to 'the solvency and liquidity of the central body', it implicitly but necessarily states that that the prudential supervision of a group comprising a central body and the entities affiliated to it is subject to the condition that that central body has credit institution status.

81 The ECB, the Commission and the CNCM contest that line of argument.

– *Assessment of the Court*

82 As a preliminary point, it should be noted that Article 10 and Article 11(4) of Regulation No 575/2013 concern an exception to the application of the prudential requirements laid down in that regulation to credit institutions affiliated to a central body that supervises them. However, the second limb of the first ground of each appeal relates not to the existence of such an exception but to that of a 'supervised group' within the meaning of Article 2(21)(c) of Regulation No 468/2014, which refers to the conditions laid down in Article 10 of Regulation No 575/2013.

83 In that regard, as the General Court correctly observed in paragraphs 98 to 100 of the first judgment under appeal and paragraphs 97 to 99 of the second judgment under appeal, apart from the fact that Article 2(21)(c) refers only to Article 10 of Regulation No 575/2013 and the latter contains no reference to Article 11(4) of that regulation, the implementation of the latter provision is not a condition for, but a consequence of, the application of Article 10, since it is only where the competent authority, acting on the basis of Article 10, exempts entities affiliated to a central body from the application of prudential requirements on an individual basis that the aforementioned Article 11(4) applies.

84 Consequently, in the absence of such a decision to exempt, Article 11(4) of Regulation No 575/2013 is not applicable and the question whether the central body concerned complies with that provision ceases to be of any relevance for the purposes of the ECB's exercise of prudential supervision over the entire group comprising that central body and the entities affiliated to it.

85 As regards the condition laid down in Article 10(1)(b) of Regulation No 575/2013, to the effect that 'the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts of these institutions', it need hardly be pointed out that this does not in any way mean that the central body at issue must have credit institution status.

86 As is clear from the very wording of that provision, the condition which that provision lays down is concerned not with individual supervision of the central body but with the existence of monitoring in respect of the solvency and liquidity of the whole entity comprised of that body and the institutions affiliated to it, on a consolidated basis, that is to say, on the basis of the consolidated accounts of those entities.

87 Furthermore, as the General Court correctly observed in paragraph 106 of the first judgment under appeal and paragraph 105 of the second paragraph under appeal, it is not necessary for the central body to have credit institution status, since fulfilment of the conditions set out in Article 10(1)(b) of Regulation No 575/2013 is a sufficient basis for the compliance of the group at issue with prudential requirements to be supervised.

88 Consequently, the General Court's finding that neither Article 10(1)(b) of Regulation No 575/2013 nor Article 11(4) of that regulation requires a central body to have credit institution status in order for Article 2(21)(c) of that regulation to apply is not vitiated by an error of law.

89 In those circumstances, the second limb of the first ground of each appeal cannot be upheld and the first ground of each appeal must be dismissed.

The second ground of each appeal

Arguments of the parties

90 By the second ground which it raises in support of each of its appeals, CMA claims that the Crédit mutuel group cannot be classified as a 'supervised group' within the meaning of Article 2(21)(c) of Regulation No 468/2014 because, contrary to what was held in paragraphs 136 and 137 of the first judgment under appeal and paragraphs 135 and 136 of the second judgment under appeal, it does not satisfy the condition laid down in Article 10(1)(a) of Regulation No 575/2013.

91 Principally, CMA claims that the General Court committed an error of law in taking the view that decision No 1-1992 of the CNCM of 10 March 1992 relative a l'exercise de la solidarité entre les caisses de Crédit mutuel et les caisses de Crédit mutual agricole rural (on joint and several liability between credit union branches and agricultural credit union branches) ('the decision of 10 March 1992') demonstrated the existence of an obligation to transfer capital and liquid assets within the Crédit mutuel group and that, consequently, that condition could be regarded as being fulfilled.

92 In that regard, the CMA argues that, although, under the joint and several liability mechanism established by that decision, joint and several liability exists between branches forming part of the same regional group, there is, on the other hand, no obligation to transfer capital and liquid assets between regional groups. Thus, if one regional group were to find itself in difficulty, the CNCM could not require another regional group to transfer capital and liquid assets to support it.

93 The fact that a national joint and several liability mechanism enables the Caisse centrale du Crédit mutuel to intervene by using the limited resources entrusted to it by the regional groups does not support the identification of an obligation to transfer capital and liquid assets between the regional groups. The regional groups simply make a small part of the deposits they have collected available to the central branch, which remains in debt to those groups.

94 In the alternative, CMS takes the view that, even if the decision of 10 March 1992 does provide for the existence of such an obligation, that decision does not apply to all of the entities comprising the Crédit mutuel group subject to prudential supervision by the ECB, since that group includes many regional branch subsidiaries which, as they are not affiliated to that group's central body, fall outside the scope of that decision and are not therefore bound by any obligation to share joint and several liability with, or provide support to, the other entities in that group.

95 Consequently, CMA considers that the General Court was wrong to find that the Crédit mutuel group satisfied the condition laid down in Article 10(1)(a) of Regulation No 575/2013.

96 The ECB, the Commission and the CNCM contest that line of argument.

97 The Commission submits that the General Court's reading of Article L. 511-31 of the code monétaire et financier is too restrictive and that, contrary to what the General Court found, Article L. 511-31 is sufficient in itself to support the view that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 is fulfilled, there being no need to examine whether the decision of 10 March 1992 demonstrates the existence of joint and several liability commitments within the Crédit mutuel group.

98 The Commission refers in particular to decision No 399413 of the (French) Conseil d'État (Council of State) of 9 March 2018 and submits that the Court could make a substitution of grounds in this regard.

Findings of the Court

99 It should be recalled that, after the General Court pointed out that, in the absence of a decision by the national courts with jurisdiction, it necessarily fell to it to give a ruling on the scope of Article L. 511-31 of the code monétaire et financier, the General Court held, in paragraph 134 of the first judgment under appeal and paragraph 133 of the second judgment under appeal, that the wording of that provision did not, in itself, lead to the conclusion that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 was met, since the reference to the taking of 'necessary measures' to 'ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole' was too general to permit the inference that an obligation exists to transfer capital and liquid assets within the Crédit mutuel group to ensure that the obligations towards creditors are fulfilled.

100 It was further to that finding that the General Court examined whether such an obligation followed from the decision of 10 March 1992.

101 CMA's objection, that decision No 399413 of the Conseil d'État of 9 March 2018 cannot be taken into consideration for the purposes of interpreting Article L. 511-31 of the code monétaire et financier because it postdates the delivery of the judgments under appeal, cannot be upheld.

102 The parties have had an opportunity to present their observations to the Court in this regard and, in any event, the Conseil d'État had already given a ruling on that provision in decision No 403418 of 13 December 2016, that is to say before the judgments under appeal were delivered.

103 In paragraph 5 of that decision, the Conseil d'État stated, in particular, that, in adopting Article L. 511-31 of the code monétaire et financier, the French legislature entrusted to the CNCM responsibility not only for collectively representing the Crédit mutuel branches affiliated to the Crédit mutuel network, but also for the tasks of ensuring that the network operates cohesively and that the legislative and regulatory provisions specific to credit institutions are applied, exercising administrative, technical and financial scrutiny over the organisation and management of each branch and taking any measures necessary for the smooth running of that network. The Conseil d'État also held that, under Article L. 511-31, the CNCM may, where the financial situation of the institutions concerned so warrants, and notwithstanding any provisions or stipulations to the contrary, decide to merge two or more branches affiliated to the network, transfer their business assets or wind them up. According to the Conseil d'État, it follows from that statutory and regulatory framework that, whatever the nature of the relationships between the groupings formed within the Crédit mutuel network, the CNCM is statutorily responsible for preparing and implementing measures connected with the systemic regulation of the banking system on behalf of the whole of the Crédit mutuel group and must, as a 'parent undertaking in the Union', have a recovery plan for that group.

104 In paragraph 7 of decision No 399413 of 9 March 2018, the Conseil d'État went on to say that, by dint of performing those tasks connected with the regulation of credit institutions, the CNCM is necessarily competent to issue binding instructions to branches to ensure that they comply with the provisions applicable to them and to impose the appropriate penalties on them should they fail to comply with those provisions. In paragraph 20 of that decision, the Conseil d'État held that, for the purposes of 'ensuring the liquidity and solvency of the network' for which they are responsible, the central bodies are empowered under Article L. 511-31 of the code monétaire et financier to take 'any necessary measures' and, in particular, to introduce between the members of the network binding joint and several liability mechanisms that must not be confined to the mere establishment of pre-financed schemes such as guarantee funds.

105 It is therefore apparent from decisions No 403418 and No 399413 of the Conseil d'État of 13 December 2016 and 9 March 2018 respectively that the obligation on central bodies to 'take any measures necessary, in particular, to ensure the liquidity and solvency of each of those institutions and companies and of the network as a whole', which is laid down in Article L. 511-31 of the code

monétaire et financier, confers on the CNCM very extensive powers of administrative, technical and financial scrutiny over the entire Crédit mutuel network that allow it to introduce at any time binding joint and several liability mechanisms such as the imposition on members of that network of obligations to transfer capital and liquid assets, and, notwithstanding any provisions or stipulations to the contrary, allow it to decide to merge two or more branches affiliated to that network.

106 As the Advocate General noted in point 125 of his Opinion, given that merging a member of the Crédit mutuel network with an institution in financial difficulty is tantamount to requiring the member in question to take over that institution's liabilities, such an operation may have a much more onerous financial impact on that member than the imposition of a mere obligation to transfer capital and liquid assets.

107 It follows that Article L. 511-31 of the code monétaire et financier, as interpreted by the Conseil d'État, implies the existence of an obligation to transfer capital and liquid assets within the Crédit mutuel group for the purposes of ensuring that obligations to creditors are fulfilled, with the result that the ECB was justified in taking the view that the condition laid down in Article 10(1)(a) of Regulation No 575/2013 was fulfilled.

108 In those circumstances, there is no need to respond to the second ground of each of the appeals, which must therefore be dismissed as being ineffective.

109 In the light of all the foregoing, the appeals must be dismissed in their entirety.

Costs

110 In accordance with Article 184(2) of the Rules of Procedure, where an appeal is unfounded, the Court is to make a decision as to the costs.

111 According to Article 138(1) of those Rules, applicable to appeal proceedings pursuant to Article 184(1) of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

112 Since the ECB, the Commission and the CNCM have applied for costs and CMA has been unsuccessful, CMA must be ordered not only to bear its own costs but also to pay those of the ECB, the Commission and the CNCM.

On those grounds, the Court (First Chamber) hereby:

1. Dismisses the appeals.

2. Orders Crédit mutuel Arkéa to pay the costs.

[Signatures]