Court of Justice of the European Communities (including Court of First Instance Decisions)

JUDGMENT OF THE GENERAL COURT (Tenth Chamber)

7 December 2022 (*)

(Economic and monetary policy – Prudential supervision of credit institutions – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the ECB – Decision to withdraw the authorisation of the credit institution PNB Banka – Proposal of the national competent authority to withdraw authorisation – Insolvency decision in respect of PNB Banka – Reasonable time – Obligation to state reasons – Proportionality)

In Case T-230/20,

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

Republic of Latvia, represented by K. Pommere, J. Davidoviča and E. Bārdiņš, acting as Agents,

intervener,

THE GENERAL COURT (Tenth Chamber),

composed, at the time of the deliberations, of A. Kornezov, President, K. Kowalik-Bańczyk and G. Hesse (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure, and in particular:

– the application lodged at the Court Registry on 27 April 2020,

– the decision of 20 November 2020 to stay the proceedings pending the final decision of the General Court in the case that gave rise to the order of 12 March 2021, *PNB Banka* v *ECB* (T-50/20, EU:T:2021:141),

– the order of 8 February 2021, *PNB Banka* v *ECB* (T-230/20 R, not published, EU:T:2021:68), by which the application for interim relief lodged by the applicant at the Court Registry on 16 November 2020 was dismissed for lack of urgency and by which the costs were reserved,

gives the following

Judgment

1 By its action based on Article 263 TFEU, the applicant, PNB Banka AS, seeks annulment of the decision of the European Central Bank (ECB) of 17 February 2020, ECB-SSM-220-LVPNB-1, WHD-2019-0016, withdrawing its authorisation as a credit institution (‘the contested decision’).

Background to the dispute

2 The applicant is a credit institution governed by Latvian law which supplied a wide range of banking, financial and capital management services.

3 By letter of 1 March 2019, the ECB notified the applicant that it had decided to classify it as a significant entity subject to direct prudential supervision, pursuant to Article 6(5)(b) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the [ECB] concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63; ‘the SSM Regulation’). That decision took effect on 4 April 2019.

4 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.

5 On 22 August 2019, the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission, Latvia; ‘the FCMC’) lodged an application to have the applicant declared insolvent.

6 On 12 September 2019, the Rīgas pilsētas Vidzemes priekšpilsētas tiesa (Riga City Court, Vidzeme District, Latvia) declared the applicant insolvent pursuant to the Latvian legislation on civil procedure (‘the insolvency decision’). At the same time, an insolvency administrator was appointed. The court in

question then transferred to him all the powers of the applicant and its board of directors. In addition, that court rejected the request of the applicant's board of directors to maintain its rights to represent the applicant in the context of the action, inter alia, against the ECB's assessment that the applicant was failing or likely to fail ('the FOLTF assessment') and against the SRB's decision not to adopt a resolution scheme in respect of the applicant.

7 On the same day, the FCMC, in accordance with Article 80 of Regulation (EU) No 468/2014 of the [ECB] of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the [ECB] and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1), submitted to the ECB a proposal for a decision that the applicant's authorisation to operate as a credit institution be withdrawn on the basis of the Latvian legislation on credit institutions.

8 On 28 October 2019, the ECB sent to the applicant's insolvency administrator a draft decision to withdraw authorisation. Following the delivery of 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), the ECB also called on the lawyer authorised by the applicant's board of directors to adopt a position on the draft decision to withdraw authorisation.

9 By letter of 18 November 2019, the lawyer authorised by the applicant's board of directors requested the ECB, first, to extend, for the second time, the deadline given to him to submit his observations on the draft decision to withdraw authorisation and, secondly, to instruct the insolvency administrator to grant him access to the applicant's premises, information, members of staff and financial resources.

10 By letter of 19 November 2019, sent to the applicant by email, the ECB stated in particular that it was unable to comply with the request of the lawyer authorised by the applicant's board of directors that the insolvency administrator be instructed to grant that lawyer access to the applicant's premises, information, staff and resources as the purpose of the request fell outside its scope of competence. By contrast, the extension of the deadline requested by the lawyer authorised by the applicant's board of directors was granted and the ECB allowed him to have access to the supervisory file.

11 On 17 February 2020, by the contested decision, the ECB withdrew, with effect from 18 February 2020, the applicant's authorisation as a credit institution pursuant to Article 4(1)(a) and Article 14(5) of the SSM Regulation and Articles 80 and 83 of the SSM Framework Regulation, read in conjunction with Article 18(d) and (e) 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), and the Latvian legislation on credit institutions.

Forms of order sought

12 The applicant claims that the Court should:

– annul the contested decision;

– order the ECB to pay the costs.

13 The ECB, supported by the Republic of Latvia, contends that the Court should:

– dismiss the action as entirely unfounded;

– order the applicant to pay the costs.

Law

Oral part of the procedure

14 According to Article 106 of the Rules of Procedure of the General Court:

‘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. …’

15 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’.

16 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.

17 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.

18 In this case, 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.

19 By letter of 16 November 2021, the applicant requested that a hearing be held. In the first paragraph of its request, the applicant merely argues that a hearing is necessary in order to ‘hear witnesses’ without, however, specifying the witnesses concerned and how their statements would be relevant to the outcome of the dispute. That is also not clear from the statement of A annexed to the request for a hearing. That statement contains, in essence, allegations of corruption against the Latvian authorities, the relevance of which to the lawfulness of the contested decision adopted by the ECB is not explained at all.

20 In addition, in the second and third paragraphs of its request for a hearing, the applicant alleges an interference with its effective representation.

21 Even if, in so doing, the applicant claims that it was prevented from stating reasons for its request for a hearing, which is not apparent from that request, it must be held that its argument relating to an interference with its effective representation cannot be regarded as a justification. In particular, even if the applicant were deprived of effective representation, on the basis which it states, that fact in no way prevented it from submitting detailed information in support of a request for a hearing.

22 Accordingly, it must be held that the applicant has not submitted any information enabling a real assessment of the benefit of a hearing to it, nor has it indicated the elements of the case file or arguments which it considers it necessary to develop or refute more fully at a hearing. In those circumstances, the request for a hearing cannot be classified as a request stating the reasons for which the applicant wishes to be heard within the meaning of Article 106(2) of the Rules of Procedure and paragraph 142 of the PRI.

23 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.

The claims for annulment

24 The applicant puts forward two pleas in law in support of its action. The first plea alleges certain procedural defects and a failure to state reasons. The second plea alleges certain errors vitiating the validity of the contested decision.

The first plea, alleging certain procedural defects and a failure to state reasons

25 The first plea is divided into eight parts. The first and seventh parts allege, in essence, infringement of the obligation to state reasons; the second, infringement of Article 14(5) of the SSM Regulation; the third, procedural defects relating to the adoption of the proposal to withdraw authorisation by the FCMC; the fourth, infringement of the principle that an administrative procedure must be conducted within a reasonable time; the fifth, a lack of relevance of the contested decision; and, the sixth and eighth, an interference by the ECB with the representation of the applicant and infringement of its right to be heard.

– *The first and seventh parts of the first plea, alleging, in essence, a failure to state reasons*

26 By the first and seventh parts of the first plea, which it is appropriate to examine together, the applicant submits, in essence, that the contested decision is insufficiently reasoned. Thus, it claims that the contested decision provides limited and partially incorrect information on the procedure that preceded the adoption of the contested decision. More specifically, that decision does not contain any information on the procedure that preceded the adoption, by the FCMC on 12 September 2019, of the proposal to withdraw authorisation. In addition, that proposal had already been approved before 12 September 2019 given the short period of time between the insolvency decision in respect of the applicant and the submission of that proposal to the ECB. The ECB had, in actual fact, finalised the procedure for withdrawal of the applicant's authorisation before the delivery of 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), in order to circumvent the possible consequences of that judgment. Lastly, the ECB does not specify, in the contested decision, the reasons why the FCMC proposed the withdrawal of the applicant's authorisation even though the ECB had decided to classify the applicant as a significant entity subject to direct prudential supervision on the basis of Article 6(5)(b) of the SSM Regulation.

27 The ECB disputes those arguments.

28 It must be borne in mind that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review (judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 85).

29 The requirement to state reasons must be assessed by reference to the circumstances of the case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of concern within the meaning of the fourth paragraph of Article 263 TFEU, may have in obtaining explanations. It is not necessary for the reasoning to specify all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:T:2019:372, paragraph 87).

30 The obligation to state reasons established by Article 296 TFEU for measures adopted by EU institutions is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue (see, to that effect, judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 181).

31 Furthermore, Article 33 of the SSM Framework Regulation, entitled ‘Motivation of ECB supervisory decisions’, provides, in paragraph 2, that the statement of reasons accompanying a supervisory decision is to contain the material facts and legal reasons on which the ECB supervisory decision is based.

32 In the present case, the Court notes, as a preliminary point, that the applicant, in support of the complaints alleging infringement of the obligation to state reasons, merely states briefly that the contested decision fails to set out the reasons why the ECB decided to withdraw the applicant’s authorisation, that that decision does not contain the procedural elements prior to the date of the proposal to withdraw authorisation and that certain facts are misrepresented.

33 Part 1 of the contested decision, entitled ‘Procedure’, begins with the FCMC’s proposal of 12 September 2019 to withdraw the applicant’s authorisation. In accordance with Article 14(5) of the SSM Regulation, the ECB may withdraw the authorisation, inter alia, on a proposal from the national competent authority. The proposal in question therefore constitutes the starting point of that procedure. In any event, in Part 2 of the contested decision, entitled ‘Facts’, the ECB refers to procedural elements prior to the proposal to withdraw authorisation. Thus, that part mentions, inter alia, first, the inspection carried out by the ECB at the applicant’s premises between 4 March and 10 May 2019 pursuant to Article 6(5)(d) of the SSM Regulation, read in conjunction with Article 12 of that regulation and Articles 143 to 146 of the SSM Framework Regulation; secondly, the ECB’s decision of 1 March 2019 that classifies the applicant as a significant entity subject to direct prudential supervision on the basis of Article 6(5)(b) of the SSM Regulation; thirdly, the ECB’s assessment of 15 August 2019 that the applicant was failing or likely to fail within the meaning of Article 18(1) of Regulation No 806/2014; and, fourthly, the SRB’s decision on the same day not to adopt a resolution scheme in respect of the applicant under that same provision.

34 In addition, Part 3.1 of the contested decision includes the grounds for withdrawal of the authorisation and its legal bases. Thus, the ECB clearly explains, in points 3.1.1 to 3.1.3 of the contested decision, read in conjunction with point 1.1 thereof, that the procedure for withdrawal of authorisation was initiated following the FCMC’s proposal and based on Section 27(1)(6) of the Kredītiestāžu likums

(Latvian Law on Credit Institutions) of 5 October 1995 (*Latvijas Vēstnesis*, 1995, No 163), according to which the authorisation of a credit institution may be withdrawn if a court has decided to open insolvency proceedings against that institution. In addition, it is stated that, for several years, the applicant had blatantly failed to comply with its prudential obligations and was not in a position to restore its situation.

35 Lastly, in Part 3.2 of the contested decision, the ECB examines the proportionality of the withdrawal of authorisation.

36 In those circumstances, the grounds of the contested decision enabled the applicant to ascertain the reasons for the contested decision for the purpose of assessing whether it was well founded and enable the Court to exercise its power of review. That finding is not called into question by the other arguments put forward by the applicant and summarised in paragraph 26 above.

37 As regards the applicant's claim that the facts are misrepresented, that claim will be examined in the context of the analysis of the complaints relating to the validity of the contested decision. The same applies to the argument that the ECB had, in actual fact, finalised the procedure for withdrawal of the applicant's authorisation before the delivery of 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), and to the claim that the FCMC had already approved the proposal to withdraw authorisation before 12 September 2019.

38 Consequently, the applicant is not justified in claiming that the ECB infringed the obligation to state reasons under Article 296 TFEU and Article 33 of the SSM Framework Regulation.

39 Accordingly, the first and seventh parts of the first plea must be rejected.

– *The second part of the first plea, alleging infringement of Article 14(5) of the SSM Regulation*

40 The applicant submits that the ECB made a procedural error by withdrawing its authorisation on a proposal from the FCMC. By decision of 1 March 2019, the ECB had classified the applicant as a significant entity subject to direct prudential supervision on the basis of Article 6(5)(b) of the SSM Regulation as from 4 April 2019. In the applicant's view, Article 14(5) of the SSM Regulation, read in conjunction with Article 83 of the SSM Framework Regulation, precludes the ECB from withdrawing the authorisation of a credit institution on a proposal from the national competent authority where it is no longer the latter which is responsible for its direct prudential supervision, but the ECB. In addition, in the applicant's view, it follows from Article 80(2) and Article 83(2) of the SSM Framework Regulation that, in the case of a proposal by a national competent authority to withdraw authorisation, the national resolution authority must be consulted by the national competent authority and by the ECB. The national resolution authority is responsible only for less significant credit institutions, and thus the adoption of a decision to withdraw authorisation on a proposal from the national competent authority is applicable only to those institutions.

41 In addition, only the authority responsible for the direct prudential supervision of a credit institution is able to assess whether the authorisation of that credit institution is to be withdrawn. In this case, although it was no longer responsible for the direct prudential supervision of the applicant, the FCMC submitted to the ECB a proposal to withdraw authorisation, which is an important stage in the procedure provided for in Article 14(5) of the SSM Regulation. In actual fact, the FCMC therefore took the decision to withdraw authorisation and the ECB merely approved it.

42 The ECB disputes those arguments.

43 Under Article 4(1)(a) of the SSM Regulation, the ECB is, within the framework of Article 6 of that regulation, to be exclusively competent in relation to all credit institutions established in the participating Member States to authorise them and to withdraw their authorisations subject to Article 14 of that regulation. Thus, the first subparagraph of Article 6(4) of the SSM Regulation provides, inter alia, that, in relation to the tasks defined in Article 4 thereof, except for points (a) and (c) of paragraph 1 of that article, the ECB shall have the responsibilities set out in paragraph 5 and the national competent authorities shall have the responsibilities set out in paragraph 6 of Article 6 of that regulation. It follows that the task of withdrawing authorisations of credit institutions, provided for in Article 4(1)(a) of the SSM Regulation, is excluded from the tasks in respect of which the ECB and the national competent authorities have shared competence. Therefore, the ECB is exclusively competent to withdraw authorisations, both of credit institutions classified as significant entities and of those classified as less significant entities.

44 The first subparagraph of Article 14(5) of the SSM Regulation provides that the ECB may withdraw the authorisation of a credit institution in the cases set out in relevant EU law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from such a national competent authority.

45 The second subparagraph of Article 14(5) of the SSM Regulation provides that, where the national competent authority which has proposed the authorisation in accordance with paragraph 1 of that article considers that the authorisation must be withdrawn in accordance with the relevant national law, it is to submit a proposal to the ECB to that end. In that case, the ECB is to take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.

46 Article 80(1) of the SSM Framework Regulation provides that, if the relevant national competent authority considers that a credit institution's authorisation should be withdrawn in whole or in part in accordance with relevant Union or national law, it is to submit to the ECB a draft decision proposing the withdrawal of the authorisation, together with any relevant supporting documents. In accordance with paragraph 2 of that article, the national competent authority is to coordinate with the national resolution authority with regard to any draft withdrawal decision that is relevant to the national resolution authority.

47 It follows from Article 83(1) of the SSM Framework Regulation that the ECB is to take a decision on the withdrawal of an authorisation without undue delay and that it may accept or reject the relevant draft withdrawal decision. Under paragraph 2 of that article, the ECB is to take into account, first, its assessment of the circumstances justifying withdrawal; secondly, where applicable, the national competent authority's draft withdrawal decision; thirdly, consultation with the relevant national competent authority and, where the national competent authority is not the national resolution authority, the national resolution authority; and, fourthly, any comments provided by the credit institution pursuant to Articles 81(2) and 82(3) of that regulation.

48 In addition, Article 18(e) of Directive 2013/36 provides that the competent authorities may withdraw an authorisation granted to the credit institution concerned where that credit institution falls within one of the cases where national law provides for withdrawal of authorisation. In this case, Section 27(1)(6) of the Latvian Law on Credit Institutions, which is intended to transpose Article 18(e) of Directive 2013/36, provides that the authorisation of a credit institution may be withdrawn if 'a court has confirmed the decision, taken in accordance with the procedures provided for in [that] law, to initiate winding-up or insolvency proceedings in relation to the credit institution'. On that basis, even though it was no longer responsible for the direct prudential supervision of the applicant, the FCMC was best placed to propose to the ECB that the authorisation of the institution in question be withdrawn on the basis of a national judicial decision ordering the liquidation or declaring the insolvency of that

institution.

49 It follows from all the provisions referred to in paragraphs 43 to 48 above that the power of the national competent authority to propose the withdrawal of the authorisation of a credit institution, including where that institution is under the direct prudential supervision of the ECB, is explained by the fact that such a withdrawal may also be based on one of the cases where national law provides for withdrawal. In such a situation, the national competent authority is particularly well placed to propose to the ECB that the authorisation in question be withdrawn on that basis.

50 In those circumstances, the fact that the ECB was, in this case, responsible for the direct prudential supervision of the applicant did not preclude the decision to withdraw authorisation from being taken on a proposal from the FCMC. That finding is not called into question by the other arguments put forward by the applicant.

51 The applicant relies on the wording of Article 80(2) of the SSM Framework Regulation, according to which the national competent authority is to coordinate with the national resolution authority with regard to any draft withdrawal decision that is relevant to the national resolution authority, and of Article 83(2) of that regulation, which provides that the ECB, in taking its decision, is to take into account consultation with the relevant national competent authority and, where the national competent authority is not the national resolution authority, the national resolution authority. In the applicant's view, the reference to the national resolution authority implies that the national competent authority may only propose the withdrawal of the authorisation of a less significant credit institution, the national resolution authority not being responsible for credit institutions classified as significant entities.

52 It should be noted that, as the ECB has rightly argued, according to Article 5(1) of Regulation No 806/2014, where the SRB performs tasks and exercises powers, which, pursuant to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190), are to be performed or exercised by the national resolution authority, the SRB is, for the application of Regulation No 806/2014 and of Directive 2014/59, to be considered to be the relevant national resolution authority. Even though the provision referred to above does not expressly refer to the SSM Framework Regulation, the same reasoning applies in relation to that regulation.

53 It should be noted that, according to Article 14(6) of the SSM Regulation, as long as national resolution authorities remain competent to resolve credit institutions, in cases where they consider that the withdrawal of the authorisation would prejudice the adequate implementation of or actions necessary for resolution or to maintain financial stability, they are duly to notify their objection to the ECB explaining in detail the prejudice that a withdrawal would cause. Accordingly, in a situation where the SRB is the competent resolution authority in respect of a credit institution, the national authorities responsible for resolutions are no longer entitled to make representations to the ECB in the context of a procedure for withdrawal of authorisation. It may be inferred from the foregoing that, in a situation such as that in the present case, which concerns a credit institution classified as a significant entity, it follows from Article 14(5) of the SSM Regulation, read in conjunction with Article 83(2)(c) of the SSM Framework Regulation, that the ECB is not required to consult the national resolution authority where the SRB is the competent resolution authority.

54 It must therefore be concluded that, during the procedure for withdrawal of the authorisation of a credit institution classified as a significant entity, the SRB takes the place of the national resolution authority for the purposes of the SSM Framework Regulation. The ECB may therefore withdraw the

authorisation on its own initiative or on a proposal from the national competent authority following consultations with the SRB. It therefore does not follow either from Article 80(2) of the SSM Framework Regulation or from Article 83(2) of that regulation that the national competent authority could propose the withdrawal of authorisation only of credit institutions classified as less significant entities.

55 It follows that, in this case, the ECB was entitled to adopt the contested decision on a proposal from the FCMC. Accordingly, the second part of the first plea must be rejected.

– *The third part of the first plea, alleging procedural defects relating to the adoption of the proposal to withdraw authorisation by the FCMC*

56 The applicant submits that the FCMC did not follow an appropriate procedure to ensure that the applicant's procedural rights were observed before submitting the proposal to withdraw authorisation to the ECB. That proposal was submitted only a few hours after the delivery of the insolvency decision in respect of the applicant without, moreover, there having been any particular urgency for doing so. Accordingly, the contested decision is vitiated by a procedural defect and should be annulled.

57 The ECB contends that the applicant's arguments must be rejected as inadmissible or, failing that, as unfounded.

58 As regards the admissibility of the present complaint, it should be noted that, under Article 76 of the Rules of Procedure, an application must state the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law, and that that statement must be sufficiently clear and precise as to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any other supporting information (see, to that effect, judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144, paragraph 191).

59 It must also be noted that, in particular, it is necessary, for an action before the Court to be admissible, that the basic matters of law and fact relied on be indicated, at least in summary form, coherently and intelligibly in the application itself (judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144, paragraph 192).

60 In this case, it should be noted that the matters of law and fact on which the applicant bases its arguments are intelligible from a reading of the application. Similarly, the ECB has been able, in the defence, to respond to those arguments. The Court has also been able to identify the applicant's arguments from a reading of the application. It follows that those arguments are admissible.

61 As is apparent from Article 4(1)(a) and Article 14(5) of the SSM Regulation, a national competent authority does not have the power to withdraw the authorisations of credit institutions, but only to propose, as the case may be, that the ECB withdraw such authorisations. In the present case, as pointed out in paragraph 11 above, it was the ECB which, in accordance with Article 14(5) of that regulation, decided to withdraw the applicant's authorisation on a proposal from the FCMC.

62 It should be noted, in that regard, that neither the SSM Regulation nor the SSM Framework Regulation contain any indication as to the procedure governing the adoption, by the national competent authority, of a proposal to withdraw authorisation. Moreover, EU law does not require that proposal to be notified to the credit institution concerned.

63 The proposal in question constitutes an act of a national authority and constitutes a stage of a procedure in which an EU institution exercises, alone, the final decision-making power without being bound by the preparatory acts or the proposals of the national authorities. In such a situation, it falls to

the EU Courts, by virtue of their exclusive jurisdiction to review the legality of EU acts on the basis of Article 263 TFEU, to rule on the legality of the final decision adopted by the EU institution at issue and to examine, in order to ensure effective judicial protection of the persons concerned, any defects vitiating the preparatory acts or the proposals of the national authorities that would be such as to affect the validity of that final decision (see, to that effect, judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraphs 43 and 44).

64 The applicant merely refers, in essence, to the absence of an appropriate procedure, or even to the absence of any procedure, before the FCMC and to the infringement of all its procedural rights on account of the short period of time within which the FCMC submitted a proposal to withdraw authorisation to the ECB. Even if the proposal to withdraw authorisation was made only 'a few hours' after the delivery of the insolvency decision in respect of the applicant, the applicant does not specify how that is liable to affect the lawfulness of that proposal and, in short, that of the contested decision adopted by the ECB, or which provision of EU or Latvian law has been infringed.

65 In the absence of any other matters of law or fact put forward by the applicant and of any indication whatsoever as to the specific procedural rights of the applicant that the latter claims were infringed by the FCMC, it is not apparent that the manner in which the procedure that gave rise to the proposal to withdraw authorisation by the FCMC was carried out is such as to affect the lawfulness of the contested decision. Similarly, the applicant's claim that the FCMC's proposal to withdraw authorisation was, in actual fact, made before 12 September 2019 is in no way substantiated.

66 Accordingly, the third part of the first plea must be rejected.

– *The fourth part of the first plea, relating to the period of time that elapsed between the submission of the proposal to withdraw authorisation and the adoption of the contested decision*

67 The applicant submits that the ECB failed to comply with Article 83(1) of the SSM Framework Regulation, according to which the ECB is to take a decision on the withdrawal of an authorisation without undue delay and, in doing so, may accept or reject the draft withdrawal decision submitted by the national competent authority. It states that the FCMC's draft withdrawal of authorisation is dated 12 September 2019, whereas the contested decision was adopted on 17 February 2020. It infers from this that the ECB did not consider it necessary to withdraw the applicant's authorisation as early as 12 September 2019 and that, by delaying the adoption of the decision, the ECB deprived the applicant of effective judicial protection during that period. Moreover, the proposal to withdraw authorisation does not reflect the applicant's situation five months later, when the contested decision was adopted. Lastly, the ECB based the contested decision not only on the proposal to withdraw authorisation, but also on other additional grounds.

68 The ECB disputes those arguments.

69 The principle that an administrative procedure must be conducted within a reasonable time has been reaffirmed by Article 41(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), under which every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the European Union (see judgment of 15 July 2015, *HIT Groep* v *Commission*, T-436/10, EU:T:2015:514, paragraph 239 and the case-law cited).

70 According to the case-law, the reasonableness of the length of proceedings is to be determined in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (see, to that effect, judgment of 27 November 2001, *Z* v *Parliament*, C-270/99 P, EU:C:2001:639,

paragraph 24 and the case-law cited).

71 Furthermore, it is apparent from the case-law that infringement of the reasonable time principle may only be capable of justifying the annulment of a decision by the ECB where it could have had an impact on the outcome of the procedure. That is particularly the case where that infringement is capable of adversely affecting the rights of defence of the undertaking concerned (see, to that effect, judgment of 9 February 2022, *Sped-Pro* v *Commission*, T-791/19, EU:T:2022:67, paragraph 29 and the case-law cited).

72 In accordance with that case-law, it is necessary, in the present case, to take into account, in particular, the characteristics of the procedure for withdrawal of authorisation. Article 83(1) of the SSM Framework Regulation provides that the ECB is to take a decision on the withdrawal of an authorisation without undue delay. However, it is for the ECB, under Article 83(2) of the SSM Framework Regulation, inter alia, to assess the circumstances justifying withdrawal, to consult with the authority competent for the resolution of the credit institution concerned and to take into account the latter's comments.

73 In this case, the administrative procedure before the ECB began on 12 September 2019, the date on which the FCMC proposed to the ECB that the applicant's authorisation be withdrawn, and ended on 17 February 2020, the date on which the contested decision was adopted. Thus, that procedure lasted more than five months.

74 Nonetheless, it should be noted that, after receiving the FCMC's proposal to withdraw authorisation on 12 September 2019, the ECB first carried out its own assessment, taking into account the elements listed in Article 83(2) of the SSM Framework Regulation. Next, it sent its draft decision to withdraw authorisation to the applicant's insolvency administrator by letter of 28 October 2019 and gave him the opportunity to provide any observations he might have. Then, in order to comply with 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), the ECB, by letter of 12 November 2019, also called on the lawyer authorised by the applicant's board of directors to submit his observations on the draft decision to withdraw the applicant's authorisation. Upon the request of that lawyer, the ECB also extended the deadline for submitting observations twice and it was only on 10 December 2019 that that lawyer provided comments on behalf of the applicant. Lastly, the contested decision was adopted on 17 February 2020.

75 In the light of the circumstances referred to in paragraph 74 above, it must be concluded that the ECB did not infringe its obligation to take a decision on the withdrawal of an authorisation without undue delay within the meaning of Article 83(1) of the SSM Framework Regulation.

76 In addition, the applicant's argument that the ECB was not entitled, at the stage of the contested decision, to add grounds for withdrawal of the authorisation must be rejected. According to Article 83(2) of the SSM Framework Regulation, the draft withdrawal decision of the national competent authority is only one of the elements that the ECB is to take into account. No provision of that regulation prohibits the ECB, on the basis of its own assessment of the applicant's situation as the authority responsible for the direct prudential supervision of the applicant, from supplementing, where appropriate, the grounds already included in the FCMC's proposal to withdraw authorisation.

77 As regards, lastly, the applicant's argument that the proposal to withdraw authorisation does not reflect its situation at the time of the adoption of the contested decision, but at the time of the adoption of the proposal to withdraw authorisation by the FCMC on 12 September 2019, it must be stated that the final insolvency decision was issued on that same date and that the applicant adduces nothing to suggest that that proposal to withdraw authorisation ceased to be relevant at the time of the adoption of the

contested decision on 17 February 2020. Furthermore, as regards the applicant's situation on the date of the adoption of the contested decision, the ECB correctly contends that it took account of the applicant's financial situation over a period of several years, and not on a specific date.

78 The fourth part of the first plea must therefore be rejected.

– *The fifth part of the first plea, alleging that the contested decision is irrelevant*

79 The applicant submits that the contested decision is irrelevant because it was, in practice, no longer authorised to continue its banking activities since the adoption of the FOLTF assessment by the ECB on 15 August 2019. In addition, the contested decision is brief and is a confirmation of that assessment. The contested decision was not the subject of a press release, unlike the assessment referred to above, and the ECB publicly stated that its FOLTF assessment in respect of the applicant was a ground for withdrawal of authorisation. Moreover, the ECB and the SRB claimed in their press releases that the applicant was to be liquidated. The ECB decided as a matter of fact to withdraw the applicant's authorisation in its FOLTF assessment and, since that assessment was not a challengeable act, the ECB therefore deprived the applicant of judicial review at that time. In addition, the fact that it waited until 17 February 2020 to adopt the contested decision also deprived the applicant of any independent legal representation, given that an insolvency administrator had been appointed at the time of the delivery of the insolvency decision in respect of the applicant on 12 September 2019.

80 The ECB contends that the applicant's arguments must be rejected as inadmissible or, failing that, as unfounded.

81 In accordance with the case-law cited in paragraphs 58 and 59 above, it must be held that the matters of law and fact on which the applicant bases its arguments are intelligible from a reading of the application. Similarly, the ECB has been able, in the defence, to respond to those arguments. The Court has also been able to identify the applicant's arguments from a reading of the application. It follows that those arguments are admissible.

82 It is apparent from the judgment of 6 May 2021, *ABLV Bank and Others* v *ECB* (C-551/19 P and C-552/19 P, EU:C:2021:369), that a FOLTF assessment by the ECB is not a challengeable act, but is a preparatory act in the context of a resolution procedure provided for in Article 18 of Regulation No 806/2014. That procedure ends with a decision of the SRB to adopt or not to adopt a resolution scheme, whereas the procedure for withdrawal of authorisation leads to the adoption by the ECB of a decision concerning the withdrawal of authorisation. The two procedures are thus distinct and have different legal effects. In this case, the applicant is therefore not justified in arguing that the contested decision relating to the withdrawal of its authorisation was an irrelevant decision. In those circumstances, the applicant's claims that the ECB deprived it of effective judicial protection at the time of the adoption of the FOLTF assessment and deprived it of any independent representation prior to the adoption of the contested decision – claims which are, moreover, unsubstantiated – cannot call the foregoing considerations into question.

83 In so far as the applicant relies, in support of its arguments, on the wording used in the press releases on the FOLTF assessment published by the ECB and by the SRB, as it interprets them, it should be noted that those press releases are merely informative measures which announce and summarise that assessment. Thus, the press releases do not replace the FOLTF assessment, let alone the contested decision, and cannot create obligations which do not flow from either of the latter.

84 The fifth part of the first plea must therefore be rejected.

– *The sixth and eighth parts of the first plea, alleging interference by the ECB with the*

representation of the applicant and infringement of its right to be heard

85 First of all, the applicant submits, in essence, that its rights of defence and its right to be heard were infringed in that it was deprived of any independent representation during the period from the appointment of an insolvency administrator on 12 September 2019 to the delivery of 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). Until that judgment was delivered, the ECB considered only the insolvency administrator to be the applicant's representative and the applicant's board of directors was not given the opportunity effectively to make known its point of view. Following the delivery of the judgment in question, the lawyer authorised by the applicant's board of directors did not, however, have access to the premises of the credit institution in question or to its information, documents, staff, or to its financial resources, which were necessary to finance its legal representation.

86 Next, the applicant submits that the ECB attempted to adopt the contested decision quickly before the delivery of 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). It claims that a decision had already been finalised and submitted to the Governing Council of the ECB on 30 October 2019. Lastly, the fact that the ECB submitted its draft decision both to the insolvency administrator and to the lawyer authorised by the applicant's board of directors is contrary to the judgment referred to above.

87 The ECB disputes those arguments.

88 It must be noted at the outset that the rights of the defence, which include the right to be heard, are among the fundamental rights forming an integral part of the EU legal order and enshrined in the Charter (see, to that effect, judgments of 23 September 2015, *Cerafogli* v *ECB*, T-114/13 P, EU:T:2015:678, paragraph 32 and the case-law cited, and of 5 October 2016, *ECDC* v *CJ*, T-395/15 P, not published, EU:T:2016:598, paragraph 53).

89 The right to be heard is protected not only in Articles 47 and 48 of the Charter, which ensure respect for both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 of the Charter, which guarantees the right to good administration.

90 Article 41(2) of the Charter thus provides that the right to good administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him or her adversely is taken and the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy.

91 Article 31(1) of the SSM Framework Regulation constitutes a specific expression of the right to be heard. That provision provides, inter alia, that, before the ECB may adopt a supervisory decision addressed to a party which would adversely affect his or her rights, that party must be given the opportunity of commenting in writing to the ECB on the facts, objections and legal grounds relevant to the ECB supervisory decision.

92 As regards the right of every person to have access to his or her file, Article 32(1) of the SSM Framework Regulation, entitled 'Access to files in an ECB supervisory procedure', provides that the rights of defence of the parties concerned are to be fully respected in ECB supervisory procedures. For this purpose, and after the opening of the ECB supervisory procedure, the parties are to be entitled to have access to the ECB's file, subject to the legitimate interest of legal and natural persons other than the relevant party, in the protection of their business secrets. The right of access to the file is not to extend to confidential information.

93 It should also be borne in mind that 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), concerns the judicial protection of a credit institution in specific circumstances, namely the revocation by the appointed liquidator of the power of attorney of the lawyer authorised by the board of directors of that institution to bring an action before the Courts of the European Union against the decision to withdraw the authorisation which had affected that bank. In essence, it follows from that judgment that, in the light of the right to effective judicial protection enshrined in Article 47 of the Charter, the Courts of the European Union could not, in those circumstances, take into account the revocation of the power of attorney of the lawyer authorised by the board of directors and that, consequently, it was necessary to adjudicate on the action brought by that lawyer.

94 In this case, it should be noted that the Court has already held, in the order of 12 March 2021, *PNB Banka* v *ECB* (T-50/20, EU:T:2021:141, paragraph 70), that the ECB complied, with regard to the applicant, in the procedure for withdrawal of authorisation, with the requirements stemming from 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). First, after that judgment had been delivered, the ECB acknowledged that the applicant's board of directors was still representing the applicant for the purpose of bringing an action against the contested decision. Consequently, the ECB, in compliance with 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), also called on the lawyer authorised by the applicant's board of directors to submit his observations on the draft decision to withdraw the applicant's authorisation. Secondly, the ECB granted, by letter of 19 November 2019, the extension of the deadline for submitting observations requested by the lawyer authorised by the applicant's board of directors. Thirdly, the ECB stated in that letter that the lawyer authorised by the applicant's board of directors would be given access to the supervisory file.

95 As regards the access by the lawyer authorised by the board of directors to the applicant's premises, information, members of staff and resources, the Court has already held that the ECB was not competent to instruct the insolvency administrator to provide that access and that it was for the national authorities of the Member State concerned, as appropriate, to take the general or particular measures necessary to ensure that EU law is complied with in its territory, including the right to effective judicial protection enshrined in Article 47 of the Charter (see, to that effect, order of 12 March 2021, *PNB Banka* v *ECB*, T-50/20, EU:T:2021:141, paragraphs 71 and 73).

96 Moreover, it should also be noted that, despite the suspension of the present proceedings from 20 November 2020 to 12 March 2021, the applicant has neither demonstrated nor even claimed that it brought appropriate proceedings at national level concerning the alleged refusal of access to its premises, information, staff and resources, a refusal which, in its view, was addressed to the lawyer authorised by its board of directors and of which the applicant complains before the Court.

97 It follows that the applicant's rights of defence, in particular its right to be heard and the right of access to its administrative file, were not infringed by the ECB.

98 The other arguments put forward by the applicant do not call the foregoing considerations into question. As the ECB correctly contends, the applicant has not in any way substantiated its claim that the ECB attempted to adopt the contested decision before the delivery of 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). Moreover, contrary to what the applicant claims, that judgment, summarised in paragraph 93 above, in no way precludes the ECB from also hearing the applicant's insolvency administrator regarding the draft decision to withdraw the applicant's authorisation.

99 The sixth and eighth parts of the first plea must therefore be rejected, as must, therefore, that plea in its entirety.

The second plea, alleging errors affecting the validity of the contested decision

100 The second plea is divided into five parts, the first and second alleging that the ECB was not entitled to base the contested decision either on the insolvency decision in respect of the applicant or on the other grounds mentioned in the contested decision; the third concerning the fact that the applicant had no longer been responsible for its own management since 12 September 2019; the fourth alleging infringement of the principle of proportionality; and, the fifth, alleging errors contained in the FOLTF assessment in respect of the applicant, of which the contested decision constitutes the formalisation.

– *The first and second parts of the second plea, alleging that the ECB was not entitled to base the contested decision either on the insolvency decision in respect of the applicant or on the other grounds mentioned in the contested decision*

101 In the applicant's view, in the first part of the second plea, the ECB erred in basing the contested decision on the insolvency decision. The national court wrongly regarded the ECB's FOLTF assessment in respect of the applicant as a formal insolvency declaration and did not verify whether the applicant was actually over-indebted.

102 Furthermore, the ECB stated, inter alia in the contested decision, that the applicant's over-indebtedness was due to a recent deterioration in its financial position, whereas the ECB mentioned in that FOLTF assessment that the applicant had been over-indebted for several years. However, the applicant had never previously been considered over-indebted.

103 The applicant submits, by the second part of the second plea, that the ECB was not justified in relying in part, in the contested decision, on additional grounds that had not been mentioned by the FCMC in its draft decision to withdraw authorisation. In the applicant's view, the ECB may, in its final decision, reject or approve that draft decision, but not supplement it. Moreover, it is unclear whether those additional grounds relate to the applicant's situation on 12 September 2019, on the date of the adoption of the FCMC's proposal to withdraw authorisation, or to its situation at the time of the adoption of the contested decision on 17 February 2020. As regards the period between 12 September 2019 and the adoption of the contested decision, the applicant was unable to defend itself, since the lawyer authorised by its board of directors no longer had access to its premises or to its resources.

104 The ECB disputes those arguments.

105 It should be noted at the outset that insolvency proceedings fall within the competence of the national authorities in cases where, in particular, there are no provisions conferring such a competence on the ECB (see, to that effect, order of 12 March 2021, *PNB Banka* v *ECB*, T-50/20, EU:T:2021:141, paragraph 64). Thus, any errors vitiating the insolvency decision cannot be imputed to the ECB. Similarly, the Court does not have jurisdiction to decide whether there are any defects vitiating a decision of a national court.

106 In those circumstances, the ECB did not err in relying on the draft decision to withdraw authorisation submitted by the FCMC that, for its part, was based on the insolvency decision.

107 As regards, moreover, the additional grounds on which the ECB also based the contested decision, namely the recurring breaches by the applicant of prudential requirements during the years preceding its insolvency, it should be noted that the ECB's decisions are adopted on the basis of an assessment independent from those of the FCMC, in the light of all the relevant circumstances, including, but not limited to, the information contained in the FCMC's proposal to withdraw authorisation (see, to that effect, judgment of 2 February 2022, *Pilatus Bank and Pilatus Holding* v *ECB*, T-27/19, under appeal, EU:T:2022:46, paragraph 225).

108 In the present case, as is apparent from paragraph 11 above, the ECB did not base the contested decision only on Article 18(e) of Directive 2013/36, but also on Article 18(d) thereof. Under the latter provision, the competent authorities may withdraw the authorisation of a credit institution where that institution no longer meets the prudential requirements set out in Parts Three, Four or Six 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) or imposed under Article 104(1)(a) or Article 105 of Directive 2013/36 or where it can no longer be relied on to fulfil its obligations towards its creditors, and, in particular, where it no longer provides security for the assets entrusted to it by its depositors.

109 In that regard, the ECB stated, in point 2.1 of the contested decision, in essence, without being contradicted by the applicant, that, as from 2017, the applicant had been experiencing capital depletion and that, since 2016, it had been continuously infringing several prudential requirements. Specifically, in the ECB's view, the applicant had been in breach of own fund requirements since 2017 and, since March 2016, it had exceeded the large exposure limit. In addition, the ECB stated that the applicant had been in breach of the related-party lending limit prescribed in Latvian national law from February 2018 to June 2019. In addition, in point 2.2 of the contested decision, the ECB listed in chronological order the measures and actions taken to address the applicant's prudential issues. Those measures and actions did not result in the issues being resolved, which led the ECB, on 15 August 2019, to conclude that the applicant was failing or likely to fail.

110 As regards the applicant's argument that it is unclear what date was relevant to determine its financial position, which gave rise to the withdrawal of authorisation, the ECB rightly contends that the withdrawal of the authorisation was not based on the applicant's situation on a specific date, but on its overall prudential situation and on the development of that situation in the years preceding the adoption of the contested decision, elements which the ECB set out, inter alia, in points 2.1 and 2.2 of that decision.

111 It follows that the ECB did not err in law in basing the contested decision both on the FCMC's proposal, pursuant to Article 18(e) of Directive 2013/36, and on the repeated breaches of prudential requirements by the applicant, pursuant to Article 18(d) of that directive.

112 Consequently, the first and second parts of the second plea must be rejected.

– *The third part of the second plea, alleging that the contested decision is illegal because the applicant had no longer been responsible for its own management since 12 September 2019*

113 The applicant submits that it had, in actual fact, as regards its banking activities, been managed by the FCMC and indirectly by the ECB since 12 September 2019, the date of the insolvency decision. Any infringements of prudential requirements which gave rise to the withdrawal of authorisation are not therefore attributable to it. On the date of the adoption of the contested decision, the applicant's board of directors no longer had any influence on its management because the board was no longer informed of any such infringements.

114 The ECB disputes those arguments.

115 As has been noted in paragraph 109 above, the ECB stated, in point 2.1 of the contested decision, that, as from 2017, the applicant had been experiencing capital depletion and that, since 2016, it had been continuously infringing several prudential requirements applicable to credit institutions, in particular the large exposure limits and own fund requirements. In addition, the ECB stated, in the contested decision, that the applicant had also been in breach, from February 2018 to June 2019, of a prudential rule contained in the Latvian Law on Credit Institutions, which is intended to implement Regulation

No 575/2013. The applicant has not disputed the infringements set out by the ECB, which were, moreover, committed at the time when its board of directors was still in charge of its management.

116 The appointment of an insolvency administrator as from 12 September 2019, the date of the insolvency decision, does not call that finding into question and cannot affect the lawfulness of the contested decision.

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

– *The fourth part of the second plea, alleging infringement of the principle of proportionality*

118 The applicant submits that the ECB infringed the principle of proportionality by withdrawing the applicant's authorisation. That withdrawal was no longer necessary, since it had, in actual fact, been obliged to cease its activities at the time of the delivery of the insolvency decision and of the simultaneous appointment of the insolvency administrator. The only relevance of the contested decision could lie in the ECB's wish to be exempted from the direct prudential supervision of the applicant. In those circumstances, the ECB believes that it is no longer required to give instructions to the insolvency administrator to allow the lawyer authorised by the applicant's board of directors to access the applicant's premises, information, members of staff and resources. Lastly, even though the insolvency administrator is in favour of the withdrawal of the applicant's authorisation, it is desirable for the applicant to remain subject to the applicable legislation on credit institutions, even during the insolvency proceedings.

119 The ECB disputes those arguments.

120 It should be noted that the principle of proportionality constitutes a general principle of EU law, which is enshrined in Article 5(4) TEU. That principle requires that the measures adopted by the EU institutions do not exceed what is appropriate and necessary for attaining the objective pursued (see judgment of 18 November 2015, *Synergy Hellas* v *Commission*, T-106/13, EU:T:2015:860, paragraph 88 and the case-law cited).

121 In the present case, the ECB examined the proportionality of the withdrawal of the applicant's authorisation in Part 3.2 of the contested decision. It observed, in essence, in points 3.2.2 and 3.2.3 of that decision, that the withdrawal of authorisation was appropriate in the light of the objective of ensuring compliance with the prudential requirements laid down by law and of ensuring the safety and soundness of credit institutions and the stability of the financial system at EU and Member State level.

122 In point 3.2.4 of the contested decision, the ECB took the view, in essence, that several attempts had been made to restore the applicant's compliance with those requirements and that those attempts had not had a satisfactory outcome. The ECB also noted, in essence, that the applicant was the subject of insolvency proceedings and that, because of those proceedings and the appointment of the insolvency administrator with the task, in particular, of reimbursing, as far as possible, the applicant's creditors, and not of continuing the applicant's business activities, there was no reasonable prospect of the applicant resuming its activities as a credit institution.

123 In the light of the foregoing, the ECB explained, in point 3.2.5 of the contested decision, that, in its view, there was no less intrusive measure, since the applicant was not in compliance with certain core prudential requirements, including those relating to own funds and the large exposure limit.

124 Lastly, the ECB weighed up the interests of the applicant and its shareholders against the public interest. It took the view that the interests of the applicant and its shareholders were of an economic nature and that those interests were outweighed by the public interest in withdrawing the authorisation

of a credit institution which systematically infringed prudential requirements and which, moreover, had been declared insolvent.

125 The applicant does not dispute the elements set out by the ECB, but merely submits that the withdrawal of authorisation was no longer necessary given that it had already ceased its activities.

126 That said, it should be noted that the cessation of the applicant's banking activities since the insolvency decision in respect of the applicant, even if it were established, does not alter the fact that the applicant was still an authorised credit institution on the date of the contested decision, namely 17 February 2020. In that context, the ECB was entitled to decide to withdraw the applicant's authorisation, since the conditions laid down in Article 18(d) and (e) of Directive 2013/36 were satisfied. The other arguments put forward by the applicant that the withdrawal of authorisation is favourable to the ECB and the insolvency administrator are not such as to call into question the proportionality of the withdrawal of authorisation and are, moreover, purely speculative claims.

127 In those circumstances, the ECB was entitled to take the view that the withdrawal of authorisation was proportionate.

128 The fourth part of the second plea must therefore be rejected.

– *The fifth part of the second plea, alleging errors contained in the FOLTF assessment in respect of the applicant, of which the contested decision constitutes the formalisation*

129 The applicant submits that the contested decision is illegal for the same reasons as those set out in its action in the case that gave rise to the order of 30 September 2021, *PNB Banka and Others* v *ECB* (T-730/19, not published, EU:T:2021:677), an action which was directed against the FOLTF assessment by the ECB. The contested decision in the present case is merely the formalisation of that assessment.

130 The ECB disputes that argument.

131 It must be noted that it is for the Court, in the context of the present action, to review the legality of the decision to withdraw the applicant's authorisation, which is clearly distinct from the FOLTF assessment in respect of the applicant, as noted in paragraph 82 above.

132 The applicant's argument is therefore ineffective.

133 The fifth part of the second plea must therefore be rejected, as must, consequently, the second plea in its entirety.

134 It follows from the foregoing that the action must be dismissed in its entirety.

The measures of organisation of procedure requested by the applicant

135 In the sixth and eighth parts of its first plea, the applicant has requested the General Court to order the ECB to submit its correspondence with the insolvency administrator or with other members of staff of the applicant as from 12 September 2019, the date on which the insolvency decision was delivered, and the detailed information that would make it possible to ascertain whether the decision to withdraw authorisation had, in actual fact, already been adopted before the delivery of 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).

136 The ECB has opposed the request for measures of organisation of procedure.

137 It should be borne in mind that the Court must assess the usefulness of the measures of organisation of procedure for the purpose of Article 89 of the Rules of Procedure, requested by one of the main parties (see, to that effect, judgment of 20 March 2019, *Hércules Club de Fútbol* v *Commission*, T-766/16, EU:T:2019:173, paragraph 28 and the case-law cited).

138 To enable the Court to determine whether it is conducive to proper conduct of the procedure to request the production of certain documents, the party requesting production must identify the documents requested and provide the Court with minimum information indicating the utility of those documents for the purposes of the proceedings (see, to that effect, judgment of 17 December 1998, *Baustahlgewebe* v *Commission*, C-185/95 P, EU:C:1998:608, paragraph 93; see also judgment of 16 October 2013, *TF1* v *Commission*, T-275/11, not published, EU:T:2013:535, paragraph 117 and the case-law cited). Thus, the party requesting a measure of organisation of procedure must put forward precise and relevant reasons to explain how the evidence in question may be relevant to the resolution of the dispute (see, to that effect, judgment of 20 July 2016, *Oikonomopoulos* v *Commission*, T-483/13, EU:T:2016:421, paragraph 253 (not published)).

139 In the present case, in the light of the documents before the Court, in view of the applicant's pleas, complaints and arguments and as is apparent, in particular, from the analysis carried out in paragraphs 88 to 99 above, such a measure is neither relevant nor necessary for the purpose of ruling on the action.

140 In any event, it must be stated that the applicant merely puts forward general arguments. It provides no indication or prima facie evidence that the correspondence between the ECB and its insolvency administrator or other interlocutors speaking on its behalf, or the information relating to the adoption of the contested decision are relevant to the resolution of the present dispute or are capable of substantiating its claim that the ECB had attempted to adopt the contested decision before the delivery of 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).

141 There is therefore no need to order the measures of organisation of procedure requested.

Costs

142 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 costs, including those incurred in the proceedings for interim relief, in accordance with the form of order sought by the ECB.

143 The Republic of Latvia is to bear its own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Tenth Chamber)

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), including those incurred in the proceedings for interim relief;**

3. Orders the Republic of Latvia to bear its own costs.

Kornezov Kowalik-Bańczyk Hesse

Delivered in open court in Luxembourg on 7 December 2022.

E. Coulon S. Papasavvas

Registrar President

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* Language of the case: English.