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

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

7 December 2022 (*)

(Economic and monetary policy – Prudential supervision of credit institutions – Powers of the ECB – Investigatory powers – On-site inspections – Article 12 of Regulation (EU) No 1024/2013 – Decision of the ECB to conduct an inspection at the premises of a less significant credit institution – Action for annulment – Challengeable act – Admissibility – Competence of the ECB – Obligation to state reasons – Elements capable of justifying an inspection – Article 106 of the Rules of Procedure – Request for a hearing without a statement of reasons)

In Case T-275/19,

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

applicant,

v

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

defendant,

supported by

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

intervener,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

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

Registrar: E. Coulon,

having regard to the written part of the procedure,

gives the following

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), notified by letter of 14 February 2019, to conduct an on-site inspection at the applicant's premises.

I. Legal framework

2 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) contains a Chapter III, entitled 'Powers of the ECB'. Section 1 of that chapter, entitled 'Investigatory powers', includes Article 12, entitled 'On-site inspections', which is worded as follows:

'1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may in accordance with Article 13 and subject to prior notification to the national competent authority concerned conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 10(1) and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1). Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to those legal persons.

2. The officials of and other persons authorised by the ECB to conduct an on-site inspection may enter any business premises and land of the legal persons subject to an investigation decision adopted by the ECB and shall have all the powers stipulated in Article 11(1).

3. The legal persons referred to in Article 10(1) shall be subject to on-site inspections on the basis of a decision of the ECB.

4. Officials and other accompanying persons authorised or appointed by the national competent authority of the Member State where the inspection is to be conducted shall, under the supervision and coordination of the ECB, actively assist the officials of and other persons authorised by the ECB. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the national competent authority of the participating Member State concerned shall also have the right to participate in the on-site inspections.

5. Where the officials of and other accompanying persons authorised or appointed by the ECB find

that a person opposes an inspection ordered pursuant to this Article, the national competent authority of the participating Member State concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national competent authority concerned, it shall use its powers to request the necessary assistance of other national authorities.'

3 Article 13 of that regulation, entitled 'Authorisation by a judicial authority', provides:

'1. If an on-site inspection provided for in Article 12(1) and (2) or the assistance provided for in Article 12(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.

2. Where authorisation as referred to in paragraph 1 of this Article is applied for, the national judicial authority shall control that the decision of the ECB is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the ECB for detailed explanations, in particular relating to the grounds the ECB has for suspecting that an infringement of the acts referred to in the first subparagraph of Article 4(3) has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the ECB's file. The lawfulness of the ECB's decision shall be subject to review only by the [Court of Justice of the European Union].'

4 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 (OJ 2014 L 141, p. 1) contains Part XI, entitled 'Access to information, reporting, investigations and on-site inspections', Title 5 of which contains Articles 143 to 146 and deals with on-site inspections. Article 143, entitled 'ECB decision to conduct an on-site inspection under Article 12 of [Regulation No 1024/2013]', provides, in paragraph 2:

'Without prejudice to Article 142 and pursuant to Article 12(3) of [Regulation No 1024/2013], on-site inspections shall be conducted on the basis of an ECB decision, which shall at a minimum specify the following:

(a) the subject matter and the purpose of the on-site inspection; and

(b) the fact that any obstruction to the on-site inspection by the legal person subject thereto shall constitute a breach of an ECB decision within the meaning of Article 18(7) of [Regulation No 1024/2013], without prejudice to national law as laid down in Article 11(2) of [Regulation No 1024/2013].'

5 Article 145 of Regulation No 468/2014, entitled 'Procedure and notification of an on-site inspection', provides:

'1. The ECB shall notify the legal person subject to an on-site inspection of the ECB decision referred to in Article 143(2), and of the identity of the members of the on-site inspection team, at least five working days before the start of the on-site inspection. It shall notify the NCA of the Member State where the on-site inspection is to be conducted at least one week before notifying the legal person subject to the on-site inspection of such inspection.

2. If the proper conduct and efficiency of the inspection so require, the ECB may carry out an on-site

inspection without notifying the supervised entity concerned beforehand. The NCA shall be notified as soon as possible before the start of such on-site inspection.'

II. Background to the dispute

6 The applicant was, on the date of the contested decision, a less significant credit institution within the meaning of Article 6(4) of Regulation No 1024/2013 ('a less significant credit institution') established in Latvia. It was therefore placed under the direct prudential supervision of the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission, Latvia; 'the FCMC').

7 The applicant's business model was that of a universal bank carrying out a significant proportion of its business with non-residents. Its main risk exposure concerned counterparties situated in Russia, Ukraine or in other countries of the Commonwealth of Independent States.

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

9 In February 2016, the FCMC imposed additional provisions on the applicant for loan losses and restrictions on activities. It also required the applicant, first, to remedy the breaches of the large exposure limits and, secondly, to strengthen its capital and to provide a regular liquidity report.

10 According to the applicant, on 25 August 2017, the applicant, together with CR and other members of his family, who are the applicant's shareholders, 'notified' the Republic of Latvia of a dispute relating to the protection of their investments. They claimed that the prudential requirements imposed by the FCMC on the applicant were unjustified and unreasonable.

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

12 On 31 August 2017, the FCMC notified the applicant of a decision imposing additional loan loss provisions on it, after establishing, following an on-site inspection, a persistent breach of the large exposure limits.

13 In September 2017, the applicant was classified as a 'less significant institution in crisis', within the meaning of the crisis management cooperation framework for less significant entities, which resulted in specific supervision of the applicant by a crisis management group composed of the FCMC and the ECB.

14 On 12 December 2017, the applicant, CR and other members of CR's family, the applicant's shareholders, brought arbitration proceedings against the Republic of Latvia before the International Centre for Settlement of Investment Disputes (ICSID), on the basis of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Latvia for the Promotion and Protection of Investments ('the arbitration proceedings'). They maintained that, since the end of 2015, the applicant had been subject to excessive and arbitrary prudential supervision by the FCMC, resulting in increases in regulatory capital and restrictions on activities. They stated that that excessive and arbitrary prudential supervision was due to the influence which A exerted over the FCMC with the aim of obtaining bribes from the applicant and CR.

15 According to the applicant, in December 2017, CR reported to the Latvian authorities the acts of corruption referred to in paragraph 11 above.

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

17 On 28 June 2018, A was charged by the prosecutor leading the investigation referred to in paragraph 16 above. The indictment, supplemented on 24 May 2019, contained three charges. The first charge concerned the acceptance, in 2010, of an offer of a bribe by the Chairman of the supervisory board of a Latvian bank other than the applicant, and acceptance of the bribe itself, in return for which A allegedly provided advice to enable that bank to avoid supervision by the FCMC and refrained from participating in the FCMC meetings at which issues relating to the supervision of that bank were discussed. The second charge concerned, first, the acceptance, after 23 August 2012, of an offer of a bribe by the Vice-President of the board of directors of the same bank, in return for advice given by A in order to obtain the lifting of the restrictions on activities ordered by the FCMC and to prevent other restrictions, and, secondly, the acceptance by A of payment of half of that bribe. The third charge concerned money laundering intended to conceal the origin, transfers and ownership of the funds paid to A corresponding to the bribe referred to in the second charge.

18 By letters of 5 July and 12 September 2018, the applicant and CR informed the Chair of the Supervisory Board of the ECB that the investigation into the acts of corruption referred to in paragraph 11 above was ongoing. They stated that, after his arrest in February 2018, A had made hostile and incorrect public statements about them, claiming that CR's acquisition of the applicant was fraudulent. They considered that the prudential requirements of the FCMC vis-à-vis the applicant were excessive and discriminatory. They asked the ECB to intervene by conducting an investigation and by taking appropriate measures, such as appropriate changes in the staff responsible for the prudential supervision of the applicant. On that occasion they wrote: 'It was one of the key underlying ideas of the [Single Supervisory Mechanism (SSM)] that a more objective and impartial supervision can be ensured under the control of the ECB rather than by the local supervisors. The [applicant] and [CR] look forward to cooperating with the ECB with this goal' (letter of 5 July 2018, page 13).

19 On 30 September 2018, ICSID issued interim measures recommending that the Republic of Latvia refrain from taking any measures to withdraw the applicant's authorisation, referring to an alleged non-compliance with one of the regulatory requirements that was subject to the final deadline laid down in a decision of the FCMC of 27 February 2018 ('the ICSID recommendation').

20 On 8 October 2018, the Chair of the Supervisory Board of the ECB informed the applicant and CR, in response to their letters of 5 July and 12 September 2018, that, in the context of its task of monitoring the functioning of the SSM, the ECB shared the FCMC's opinion that the applicant's situation in terms of capital required specific supervision. The Chair stated that the applicant had been granted repeated extensions of the deadlines for adopting measures on capital and that, despite the persistence of such problems, the applicant had not been subject to strict supervisory measures other than requests for capital strengthening, recovery measures and additional provisioning by the FCMC. The ECB took the view that the applicant had for several years disregarded the large exposure limit towards a third party and had been granted repeated extensions of the deadline for remedying that issue. The ECB considered that it had no indication that the supervisory measures imposed on the applicant were excessive or disproportionate. The Chair of the Supervisory Board concluded by stating that the ECB intended to carry out its oversight function by paying particular attention to the measures taken by the applicant to remedy the breaches of prudential requirements.

21 On 21 December 2018, the FCMC requested the ECB to take over the direct prudential supervision of the applicant.

22 On 10 January 2019, the Supervisory Board approved the draft decision to conduct an on-site inspection at the applicant's premises. That draft was submitted to the Governing Council for adoption in the context of the non-objection procedure. As the Governing Council raised no objection, the draft decision was deemed adopted on 21 January 2019 ('the draft decision deemed adopted by the Governing Council' or 'the contested decision').

23 The draft decision deemed adopted by the Governing Council states, as regards the reasons for the inspection, that several deficiencies and breaches of the applicable provisions were identified over the previous years and were not the subject of appropriate measures. First, since 2016, the applicant has breached the large exposure limits set out in Article 395 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). Secondly, since February 2018, the applicant has breached the limits on transactions with related parties laid down in the Latvian legislation, due to the exposures to its main shareholder. Thirdly, since 2012, the FCMC has been obliged to take recurrent measures against the applicant in relation to anti-money laundering. Despite a fine imposed by the FCMC in July 2017, the applicant continues to breach the requirements relating to anti-money laundering and the fight against the financing of terrorism. Fourthly and lastly, the evolution of capital ratios over the last three years shows that, on several occasions, the applicant was close to breaching the Pillar 1 minimum capital requirements at group level. Since 2018, the applicant has periodically breached the Pillar 2 capital requirements. The auditors did not give an opinion in 2015, referring to issues as regards valuations of assets, whereas the newly appointed auditor issued qualified opinions in 2016 and 2017, also referring to issues as regards valuations of assets.

24 Next, the draft decision deemed adopted by the Governing Council states that the ICSID recommendation prevents the FCMC from implementing all supervisory measures with regard to the applicant. It states that, at the request of the FCMC, the ECB is preparing for the taking-over of direct prudential supervision of the applicant. It points out that an on-site inspection will enable the ECB to conduct its own analysis of the applicant's situation and states that that on-site inspection is possible irrespective of the taking-over of direct prudential supervision by the ECB. That decision indicates that, in conjunction with the taking-over of direct supervision, the ECB will then be able to take the supervisory measures necessary to ensure that the applicant complies with prudential requirements.

25 As regards the scope and timeline of the inspection, the draft decision deemed adopted by the Governing Council indicates that it is planned that the ECB will conduct an on-site inspection with the objective of an in-depth investigation of the applicant's risks, risk control and governance, in order to assess, inter alia, its procedures, systems and the quality of its management. The draft decision states that that on-site inspection will focus mainly on the credit risk.

26 The draft decision deemed adopted by the Governing Council also states that, on the basis of the results of the on-site inspection and the FCMC's most recent prudential reviews, an action plan, with a sufficiently close timeframe, will be prepared. It states that, if the irregularities identified during the on-site inspection are so serious and persistent that no prudential supervisory measure could ensure compliance with the rules in a reasonable timeframe, the ECB would initiate the procedure for withdrawal of authorisation.

27 The draft decision deemed adopted by the Governing Council also includes an annex entitled 'Overview of the recent supervisory history of [the applicant] as notified to the ECB'.

28 By letter of 14 February 2019, the Director-General of the Directorate-General for Micro-Prudential Supervision III ('the Director-General') informed the applicant that, pursuant to Article 6(5)(d) of Regulation No 1024/2013 in conjunction with Article 12 thereof and Articles 143 to 146 of Regulation No 468/2014, and according to a decision of the Supervisory Board of 10 January 2019, an on-site inspection would be conducted within the group with the objective of examining the credit risk. He stated that the scope of that review could be extended in the course of the investigation, if necessary, and that, in that case, the applicant would be informed by the Head of Mission on behalf of the ECB.

29 In that letter of 14 February 2019, the Director-General stated that the on-site inspection was scheduled for March 2019 and indicated the name of the head of the inspection mission. He stated that the head of the inspection mission would inform the applicant, on behalf of the ECB, of the identity of the members of the inspection team and would contact the applicant in the following days to organise an initial meeting.

30 In that letter of 14 February 2019, the Director-General requested the applicant to ensure that the entities concerned were informed of the content of that letter and of any subsequent changes. He requested the applicant to cooperate fully with the inspection and reminded it that, according to Article 143(2)(b) of Regulation No 468/2014, any obstruction to the on-site inspection by the legal person subject thereto constituted a breach of an ECB decision within the meaning of Article 18(7) of Regulation No 1024/2013, without prejudice to national law as laid down in Article 11(2) of that regulation.

31 By judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia* (C-202/18 and C-238/18, EU:C:2019:139), the Court of Justice annulled the decision of the KNAB of 19 February 2018 in so far as it prohibited A from performing his duties as Governor of the Central Bank of Latvia. The Court considered that the Republic of Latvia had not established that the relieving of A from office as Governor of the Central Bank of Latvia was based on the existence of sufficient indications that he had engaged in serious misconduct for the purposes of the second subparagraph of Article 14.2 of Protocol No 4 on the Statute of the European System of Central Banks and of the ECB.

32 By letter of 1 March 2019, the ECB notified the applicant that it had decided to classify it as a significant entity subject to its direct prudential supervision, pursuant to Article 6(5)(b) of Regulation No 1024/2013 and Article 39(5) of Regulation No 468/2014. That decision took effect on 4 April 2019.

33 On 5 March 2019, the head of the inspection mission met the applicant's management at an initial meeting, known as the 'kick-off meeting'. He set out, using a document handed to the applicant, the scope of the mission, entitled 'Credit risk and governance', namely classification and provisioning, inventory tape (foreclosed assets sold), collateral valuation and funds (assets held for sale), data quality, and governance and business model. He presented the members of the inspection team for each part of the mission. He specified the documentation requested from the applicant, in particular credit files and general documentation, and set out the method for exchanging information through a secure platform. He indicated the meetings to be planned which would cover the topics of the on-site inspection. He explained the organisation of the on-site inspection, in particular the inspection team's powers (access to premises, requests for information or documents within the scope of the inspection, read-only access to all relevant IT systems, interviews with any person, exchange of information with auditors) and the timetable of the inspection. That timetable referred to the Director-General's letter of 14 February 2019, an initial request for information of 26 February 2019, the kick-off meeting, on-site fieldwork from 11 March to 10 May 2019, the submission of a draft report on 12 July 2019, an 'exit meeting' on 19 July 2019, a final report, a 'closing meeting' and, finally, monitoring of the applicant's action plan.

34 The inspection began on 11 March 2019.

35 By application lodged at the Registry of the General Court on 24 April 2019, the applicant, CR and CT brought the present action.

III. Events subsequent to the bringing of the action

36 On 14 May 2019, the FCMC imposed on the applicant a fine of EUR 4 260 for infringements of the Kredītiestāžu likums (Law on Credit Institutions, *Latvijas Vēstnesis*, 1995, No 163) requiring the submission and publication of the annual accounts and the consolidated annual accounts, together with a sworn auditor's report.

37 By application lodged at the Court Registry on 14 May 2019 (Case T-301/19), the applicant, CR and CT sought annulment of the ECB's decision, notified by letter of 1 March 2019, to classify the applicant as a significant entity subject to its direct prudential supervision (see paragraph 32 above).

38 On 12 August 2019, the on-site inspection at the applicant's premises was completed.

39 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.

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

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

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

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

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

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

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

the following day.

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

IV. Procedure and forms of order sought

48 By document lodged at the Court Registry on 15 July 2019, the European Commission sought leave to intervene in the present proceedings in support of the form of order sought by the ECB. By decision of 28 August 2019, the President of the Fourth Chamber of the General Court granted the Commission leave to intervene.

49 On 16 July 2019, the ECB lodged its defence at the Court Registry.

50 On 10 September 2019, the Commission lodged its statement in intervention at the Court Registry.

51 On 19 December 2019, the General Court (Fourth Chamber), by way of a measure of organisation of procedure, requested the ECB to produce the draft decision deemed adopted by the Governing Council.

52 On 10 January 2020, the ECB produced a full confidential version of the requested document, addressed to the Court (Annex D.1), and a non-confidential version of that document. On 29 January 2020, the President of the Fourth Chamber decided not to place the confidential version of that document in the file.

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

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

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

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

57 The applicant claims that the Court should:

– annul the ECB's decision 'of 14 February 2019' to conduct an on-site inspection at its premises and its group companies;

– order the ECB to pay the costs.

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

– dismiss the action as unfounded;

– order the applicant to pay the costs.

V. Law

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

59 According to Article 51(3) of the Rules of Procedure, where the party represented by the lawyer is a legal person governed by private law, the lawyer must lodge at the Registry an authority to act given by that person.

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

61 The applicant claims that the insolvency administrator refused to allow the lawyer appointed by the applicant to represent it access to the applicant's documents, premises, staff and resources. The applicant produced, in its reply of 13 March 2020 to a question put by the Court, a letter from the insolvency administrator of 16 September 2019 stating that the applicant's lawyer should, first, 'submit to the [Insolvency] Administrator a written status report on the performance of the Agreement [relating to the provision of legal services], indicating in detail the instructions received from [the applicant], tasks performed by [the lawyer] and whether there is any actual work in progress', secondly, 'inform the [Insolvency] Administrator regarding payments …', thirdly, 'refrain from any activities on behalf of [the applicant] without prior consultation with the [Insolvency] Administrator, especially to cease providing billable services to [the applicant]'.

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

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

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

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

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

66 The decision whether or not to stay proceedings, on the basis of Article 69(c) or (d) of the Rules of

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

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

68 By order of 12 March 2021, *PNB Banka* v *ECB* (T-50/20, EU:T:2021:141), the Court dismissed the applicant's action. It held, in particular, that the ECB manifestly lacked competence to accede to the request of the applicant's board of directors to instruct the insolvency administrator to grant the lawyer authorised by that board access to the applicant's premises, information, staff and resources (paragraph 73). The Court also held that decisions taken by the national authorities in the context of insolvency proceedings, such as those to which the applicant is subject, in response to any request for access to documents, premises, staff or resources of the credit institution at issue are, as a rule, subject to review by the national courts, which, if necessary, may refer questions to the Court of Justice for a preliminary ruling under Article 267 TFEU in cases where they encounter difficulties in interpreting or applying EU law (paragraph 72).

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

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

71 In addition, it is not apparent from the decision of 12 September 2019 of the Rīgas pilsētas Vidzemes priekšpilsētas tiesa (Riga City Court (Vidzeme District)), referred to in paragraph 41 above, that the applicant would be prevented from bringing a potential dispute with the insolvency administrator before the Latvian courts. Not only does that decision mention that the applicant's board of directors does have the option to submit a separate request to the insolvency administrator as regards the rights of representation in specific assignments, but the judgment of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others* (C-663/17 P, C-665/17 P and C-669/17 P, EU:C:2019:923), relied on by the applicant in order to argue that the insolvency administrator did not cooperate satisfactorily to ensure that the applicant was represented effectively, came after that decision, with the result that the applicant could, a priori, rely on that judgment as a new element before the national court.

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

C. Oral part of the procedure

73 According to Article 106 of the Rules of Procedure:

'1. The procedure before the General Court shall include, in the oral part, a hearing arranged either

of the General Court's own motion or at the request of a main party.

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

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

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

75 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'.

76 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.

77 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.

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

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

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

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

80 In addition, in its letter of 25 October 2021 informing the main parties of the closure of the written part of the procedure, the Court Registry referred to the provisions of Article 106(2) of the Rules of Procedure and those of paragraph 142 of the PRI and drew the main parties' attention to the fact that, in

the context of the health crisis, the statement of reasons had to satisfy the requirements of that paragraph of the PRI.

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

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

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

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

D. Subject matter of the action

85 In the application, the applicant seeks annulment of the ECB's decision 'of 14 February 2019' to conduct an on-site inspection at its premises and its group companies. It states that the Director-General's letter of 14 February 2019 refers to the decision of the Supervisory Board of 10 January 2019, but that the latter decision was not disclosed to the applicant. It states that it seeks the annulment of the decision to conduct the on-site inspection which was notified to it by the ECB by letter of 14 February 2019 'irrespective of when this decision was adopted internally within the ECB'.

86 It is apparent from that letter of 14 February 2019, the defence and the ECB's response to the measure of organisation of procedure of 19 December 2019 that the draft decision to conduct an on-site inspection at the applicant's premises, approved by the Supervisory Board on 10 January 2019, was deemed adopted by the Governing Council on 21 January 2019, in the context of the non-objection procedure referred to in Article 26(8) of Regulation No 1024/2013.

87 It must be held that the draft decision deemed adopted by the Governing Council on 21 January 2019, the main grounds of which have been set out in paragraphs 23 to 27 above, is the formal decision to conduct an on-site inspection at the applicant's premises approved by the Governing Council, it being noted that the applicant had access to that document, in a version where certain information was omitted, only following the measure of organisation of procedure adopted by the Court on 19 December 2019.

88 The essence of the decision to conduct an on-site inspection, in view of the confidentiality requirements attached to the deliberations of the Governing Council, was notified to the applicant by the letter of 14 February 2019 from the Director-General, summarised in paragraphs 28 to 30 above.

89 Consequently, the action must be regarded as seeking annulment of the decision to conduct an on-site inspection adopted by the ECB on 21 January 2019 and notified, in essence, by letter of 14 February 2019.

E. The plea of inadmissibility raised by the Commission, arguing that a decision to conduct an

on-site inspection does not modify the legal situation of the person under investigation

90 The Commission submits that inspections carried out in the context of the supervision of credit institutions are a means by which a competent authority ensures continuous supervision, that is to say, collects factual evidence on the basis of which it may subsequently take measures by way of a decision, which will certainly be an act producing legal effects on the person inspected. The inspection measure does not conclude any procedure and does not establish the position to be adopted by the investigating authority. It is a stage in a procedure, possibly comprising several stages, which may be challenged by an action brought against the final decision. The inspection decision itself does not yet modify, as such, the legal situation of the person under investigation. Consequently, the action should be dismissed as inadmissible.

91 The applicant submits, on the contrary, that the contested decision constitutes a challengeable act under Article 263 TFEU.

92 As regards the Commission's standing to raise that plea of inadmissibility, it must be noted that, according to Article 142(1) of the Rules of Procedure, the intervention is to be limited to supporting, in whole or in part, the form of order sought by one of the main parties. In addition, according to Article 142(3) of the Rules of Procedure, the intervener must accept the case as he finds it at the time of his intervention.

93 It follows from those provisions that a party which is granted leave to intervene in a dispute in support of the defendant has no standing to raise a plea of inadmissibility not set out in the form of order sought by the defendant (see, to that effect, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 67 and the case-law cited).

94 It follows that the Commission has no standing to raise that plea of inadmissibility, therefore the Court is not required to respond expressly to it as regards the substance.

95 However, given that, in accordance with Article 129 of the Rules of Procedure, the General Court may at any time, of its own motion, after hearing the main parties, consider whether there exists any absolute bar to proceeding with a case, it is necessary, in the present case, in the interests of the sound administration of justice, to examine that absolute bar to proceeding with the case (see, to that effect, judgments of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraph 23, and of 19 September 2018, *HH Ferries and Others* v *Commission*, T-68/15, EU:T:2018:563, paragraph 41 (not published)).

96 Where the action for annulment against an act adopted by an institution is brought by a natural or legal person, the action lies only if the binding legal effects of that act are capable of affecting the interests of the applicant by bringing about a distinct change in his or her legal position (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9, and of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 37).

97 It does not follow from any provision or principle that any inspection at the premises of an undertaking must, whatever its nature, be the subject of an administrative decision amenable to judicial review or, a fortiori, be authorised by a judicial authority.

98 Although, 'in certain circumstances', the rights guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter') relating to private and family life, may be construed as including the right to respect for a company's registered office, branches or other business premises (see, to that effect, ECtHR, 16 April 2002, *Société Colas Est and Others v. France*,

CE:ECHR:2002:0416JUD003797197, paragraph 41), objectives of general interest such as safety, health, protection of the fundamental rights of workers or of the public present in the premises of that company, economic public order or even the sound use of public funds, are capable of justifying the implementation of inspections laid down by the legislature. In that regard, the legislature has a broader discretion where the measure concerns legal persons and not individuals (see, to that effect, ECtHR, 2 October 2014, *Delta Pekárny a.s. v. Czech Republic*, CE:ECHR:2014:1002JUD000009711, paragraph 82).

99 Where the legislature provides that the administration is to conduct inspections at the premises of an undertaking, it is for that authority to define, having regard in particular to the objective pursued and the nature of the activity and premises in question, the powers conferred on inspection officials and the safeguards relating to those powers, in particular judicial safeguards, so that any interference with the company's right to respect for its premises caused by the inspection is necessary and proportionate.

100 Although certain inspections, such as the inspections in the field of competition laid down in Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1), require the adoption of a decision amenable to judicial review, the same is not true of other types of inspections, in particular where the authorities do not have the power to enforce the inspection, even where the inspection is mandatory and the undertaking may be liable to administrative or criminal penalties if it opposes the inspection.

101 By way of example, the inspections in competition matters laid down in Article 20(3) of Regulation No 1/2003, the on-the-spot checks laid down in Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ 2014 L 227, p. 69), and the checks carried out in the Member States pursuant to Article 12 of Convention No 81 of the International Labour Organization of 11 July 1947 on labour inspection, do not require the adoption of an administrative decision amenable to judicial review.

102 In the present case, by adopting Article 12(3) of Regulation No 1024/2013, the EU legislature nevertheless decided, as it was entitled to do, that the inspections of the legal persons referred to in Article 10(1) of that regulation, in particular credit institutions established in participating Member States, had to be carried out by the ECB on the basis of a decision.

103 In that regard, it should be noted that, in accordance with Article 288 TFEU, a decision is binding in its entirety.

104 Thus, by providing that a legal person is to be subject to the inspection laid down in Article 12 of Regulation No 1024/2013 on the basis of a decision, the EU legislature attributed binding legal effects to the act providing for that inspection.

105 Furthermore, Article 143(2) of Regulation No 468/2014 sets out the minimum information that must be included in the inspection decision, namely the subject matter and purpose of the on-site inspection and the fact that any obstruction to the on-site inspection by the legal person subject thereto constitutes a breach of an ECB decision within the meaning of EU legislation, without prejudice to the applicable national law. Article 145(1) of that regulation states that that decision is to be notified to the person subject to the on-site inspection.

106 In those circumstances, an on-site inspection decision adopted on the basis of Article 12 of Regulation No 1024/2013 entails binding legal effects vis-à-vis the credit institution notified of that decision, by

subjecting that institution to an inspection the subject matter and purpose of which are defined in the decision.

107 It is true that, unlike the provisions of Article 21 of Regulation No 1/2003 relating to the 'inspection of other premises', laid down for the implementation of competition rules, Article 12 of Regulation No 1024/2013 provides that on-site inspections are to take place on the 'business premises of the legal persons' concerned, and not at 'other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned'. From that perspective, on-site inspections of credit institutions are not capable of interfering with the right to privacy in the same way as the inspections of other premises laid down for the implementation of competition rules.

108 It is also true that, even though a decision of the ECB adopted on the basis of Article 12 of Regulation No 1024/2013 entails binding legal effects vis-à-vis the credit institution notified of that decision, the possibility of using coercive measures to implement that decision is subject, as provided for in Article 13 of that regulation, to authorisation by a national judicial authority.

109 It is also true that, unlike Article 20(4) of Regulation No 1/2003, Article 12 of Regulation No 1024/2013 does not mention the existence of an action before the EU judicature against an on-site inspection decision of the ECB. Only the provisions of Article 13 of that regulation, relating to authorisation by a national judicial authority, provide that the lawfulness of the ECB's inspection decision is subject to review only by the Court of Justice of the European Union.

110 However, it necessarily follows from the provisions of Article 13 of Regulation No 1024/2013 that, at the very least when the ECB seeks authorisation from a judicial authority after having adopted an on-site inspection decision, an action may lie against that decision before the General Court.

111 Moreover, given that the EU legislature decided, unlike the mechanism laid down in Article 20(3) and (4) of Regulation No 1/2003, to confer the status of decisions on all acts enabling the ECB to conduct on-site inspections in credit institutions, there is no need to distinguish the system of judicial review of those acts according to whether or not an application for authorisation by a judicial authority is submitted by the ECB. First, the possibility of bringing an action before the Court against a measure adopted by an institution is not subject to the existence of an express reference to that effect in the legislation. Secondly, a solution to the contrary would be liable to undermine the principle of legal certainty, given that the possibility of bringing an action before the General Court against an on-site inspection decision of the ECB would then depend on that institution's decision whether or not to seek, after the adoption of that decision, the authorisation of a national judicial authority laid down in Article 13 of Regulation No 1024/2013.

112 Finally, it is true that, as the Commission states, provisional measures intended to pave the way for the final decision do not, in principle, constitute acts which may form the subject matter of an action for annulment (see, to that effect, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 10).

113 However, the intermediate acts thus referred to are, first and foremost, acts which express a provisional opinion of the institution (see judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 50 and the case-law cited), which is not the case with ECB inspection decisions.

114 Furthermore, an action for annulment of the decision by which the ECB decides to conduct an on-site inspection at the premises of a credit institution does not entail a likelihood of confusion between the various administrative and judicial phases. Such an action should not lead the Court to rule on whether

there has been an infringement of the rules on prudential supervision committed by the undertaking concerned (see, to that effect, judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 20).

115 Consequently, bearing in mind that the legislature decided, in its discretion, to classify acts adopted on the basis of Article 12 of Regulation No 1024/2013 as decisions irrespective of the existence of an authorisation issued by a national judicial authority, and decided to refer to the existence of a review of legality by the Court of Justice of the European Union in Article 13 of that regulation, on-site inspection decisions of the ECB cannot be regarded as provisional measures against which no judicial remedy lies.

116 It follows from the foregoing that an on-site inspection decision adopted on the basis of Article 12 of Regulation No 1024/2013, such as the contested decision, is capable of affecting the interests of the legal person notified of that decision, by bringing about a distinct change in its legal position, with the result that the decision may be the subject of an action for annulment brought by that person before the General Court on the basis of Article 263 TFEU, which, moreover, the main parties do not dispute.

117 Accordingly, the action is admissible.

F. Substance

118 The applicant raises ten pleas in law in the present action: the first plea in law, alleging that the ECB lacked competence to adopt the contested decision; the second plea in law, alleging infringement of Article 12(1) of Regulation No 1024/2013, in that the contested decision was not necessary within the meaning of that provision; the third plea in law, alleging infringement of that provision, in that the ECB failed properly to exercise its discretion; the fourth plea in law, alleging infringement of the principle of proportionality; the fifth plea in law, alleging infringement of the applicant's right to be heard; the sixth plea in law, alleging infringement of the ECB's obligation to examine and appraise carefully and impartially all the relevant aspects of the individual case; the seventh plea in law, alleging a failure to state reasons; the eighth plea in law, alleging infringement of the principles of the protection of legitimate expectations and legal certainty; the ninth plea in law, alleging infringement of the principles of equal treatment and non-discrimination; the tenth plea in law, alleging infringement of Article 19 and recital 75 of Regulation No 1024/2013 and misuse of powers.

119 It is appropriate to examine the pleas relating to the formal legality of the contested decision before the pleas relating to its validity.

1. First plea in law, alleging that the ECB lacked competence

120 The applicant submits that the ECB was not the competent supervisory authority on the date of the contested decision. According to Article 12 of Regulation No 1024/2013, the ECB may carry out on-site inspections only at significant credit institutions. Under Article 6(5) of that regulation, a less significant credit institution is subject to direct supervision by the national competent authority, unless the ECB decides to take over direct supervision on the basis that the credit institution is significant.

121 The ECB, supported by the Commission, disputes those arguments.

122 It follows from the wording of Article 4(1) of Regulation No 1024/2013 that the ECB has exclusive competence to carry out the tasks stated in that provision in relation to 'all' credit institutions established in the participating Member States, without drawing a distinction between significant credit institutions and less significant institutions (see, to that effect, judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraphs 37 and 38).

123 Under Article 6(1) of Regulation No 1024/2013, the ECB is to carry out its tasks within an SSM composed of the ECB and national competent authorities, and is to be responsible for the effective and consistent functioning of the SSM (judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 39).

124 The national competent authorities assist the ECB in carrying out the tasks conferred on it by Regulation No 1024/2013, by a decentralised implementation of some of those tasks in relation to less significant credit institutions (judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 41).

125 Article 6(5)(d) of Regulation No 1024/2013 provides that, with regard to the institutions referred to in paragraph 4 of that article, that is to say, less significant credit institutions, the ECB may at any time make use of the investigatory powers referred to in Articles 10 to 13 of that regulation, namely to send requests for information, conduct general investigations and conduct on-site inspections.

126 The fact that, in accordance with the provisions of the first subparagraph of Article 6(6) of Regulation No 1024/2013, the national competent authorities are to carry out, in a decentralised manner and under the supervision of the ECB, certain tasks set out in Article 4(1) of that regulation with regard to less significant credit institutions has no bearing on ECB's competence to exercise its investigatory powers with respect to those institutions, since those provisions are, according to their very wording, 'without prejudice' to paragraph 5 of Article 6 of that regulation, the relevant provisions of which have been set out in paragraph 125 above. Similarly, according to the second subparagraph of Article 6(6), the power of the national competent authorities, in accordance with their national law, to conduct on-site inspections in those institutions is also 'without prejudice' to Articles 10 to 13 of the regulation concerned, relating to the ECB's investigatory powers.

127 The ECB's power to conduct on-site inspections in less significant credit institutions is supported by Article 12 of Regulation No 1024/2013. That article provides that the ECB may carry out on-site inspections at the premises of the legal persons referred to in Article 10(1) of that regulation, point (a) of which refers to credit institutions established in the participating Member States, without drawing a distinction between significant and less significant institutions.

128 The fact, relied on by the applicant, that Article 12 of Regulation No 1024/2013 provides that the ECB may carry out on-site inspections in any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with Article 4(1)(g) of that regulation does not alter that conclusion, since Article 12 merely adds to the legal persons referred to in Article 10(1) of that regulation other entities in which the ECB may conduct an on-site inspection.

129 Article 6(5)(d) of Regulation No 1024/2013, in so far as it confers power on the ECB to conduct an on-site inspection in a less significant credit institution, is also consistent with recital 16 of that regulation, according to which the ECB should be able to exercise supervisory tasks in relation to 'all' credit institutions, as well as with recital 47 of that regulation, according to which, in order to carry out its tasks effectively, the ECB should be able to conduct on-site inspections, 'where appropriate' in cooperation with national competent authorities.

130 Consequently, it follows from the provisions of Regulation No 1024/2013 referred to above that the ECB is competent to exercise, with regard to a less significant credit institution, the investigatory powers provided for in Articles 10 to 13 of that regulation, in particular the power to conduct an on-site inspection.

131 The fact that the ECB may conduct on-site inspections in less significant credit institutions is, moreover, expressly referred to in the second sentence of Article 138 of Regulation No 468/2014.

132 Furthermore, the ECB's power to conduct on-site inspections in less significant credit institutions is not invalidated by certain publications of that institution, such as the Guide to Banking Supervision published in November 2014, the Guide to On-site Inspections and Internal Model Investigations published in September 2018 or the public consultation conducted by the ECB prior to the adoption of the latter guide. In that regard, it is sufficient to note that those publications, which are not binding, as, moreover, each of them states, cannot in any way limit the competences conferred on the ECB by the EU legislature. Furthermore, none of those publications excludes the possibility of the ECB conducting on-site inspections in less significant credit institutions. On the contrary, the Guide to Banking Supervision (paragraph 75) and the document entitled 'LSI supervision within the SSM', published in November 2017 (pages 3 and 10), refer to that possibility.

133 The applicant's other arguments must be rejected.

134 First, the applicant is not entitled to submit, in order to establish that the ECB's power to conduct on-site inspections in less significant credit institutions is an 'anomaly' in the SSM, that the ECB cannot impose obligations on the entities concerned to remedy the shortcomings identified during inspections.

135 The competence conferred by the EU legislature on the ECB to conduct on-site inspections in less significant credit institutions is consistent with the creation of the SSM, which is composed of the ECB and national competent authorities, and with the control exercised by the ECB over the implementation by the national competent authorities, in relation to less significant credit institutions, of certain tasks laid down in Article 4(1) of Regulation No 1024/2013, which fall within its exclusive competence, but Article 6 of which allows for decentralised implementation (see, to that effect, judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 49).

136 In accordance with the provisions of Article 6(5) of Regulation No 1024/2013, the ECB also has, in addition to the possibility, at any time, of making requests for information, general enquiries or on-site inspections in less significant credit institutions, a number of powers relating to the prudential supervision of those institutions, such as, for example, the power to request, on an ad hoc or continuous basis, information from the national competent authorities on the performance of their tasks or, if necessary to ensure consistent application of high supervisory standards, the power to decide, at any time, to exercise directly itself all the relevant powers for one or more less significant credit institutions. Article 6(6) of that regulation provides, moreover, that, although the national competent authorities maintain the powers, in accordance with national law, to obtain information and to carry out on-site inspections at the premises of less significant credit institutions, they are to inform the ECB of the measures taken and 'closely' coordinate those measures with the ECB.

137 Secondly, the applicant's assertion that the ECB realised that it was not competent to adopt the contested decision and, 'partly for this reason', decided, by a decision notified by letter of 1 March 2019, to classify the applicant as a significant entity is unfounded. No provision or principle prohibits the ECB from conducting an inspection at the premises of a less significant entity and from simultaneously or subsequently classifying that entity as a significant entity. Moreover, the applicant's assertion that the ECB realised that it was not competent is contradicted by the contested decision, which, on two occasions, states that the ECB is competent to adopt an inspection decision with regard to a less significant credit institution (see pages 1 and 4 of that decision).

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

2. The seventh plea in law, alleging failure to state reasons

139 The applicant submits that the ECB failed to fulfil its obligation to state reasons, since the letter of 14 February 2019 does not in any way set out the reasons why the ECB decided to conduct an on-site

inspection.

140 The ECB contends that the plea in law must be rejected.

141 The statement of reasons required inter alia 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 and the case-law cited).

142 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 direct and individual concern, 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 (see judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 87 and the case-law cited).

143 The duty to state adequate reasons for acts of the EU institutions laid down in Article 296 TFEU 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 judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 181 and the case-law cited).

144 As regards inspection decisions adopted pursuant to Article 12 of Regulation No 2014/2013, Article 143(2) of Regulation No 468/2014 provides:

‘Without prejudice to Article 142 [of Regulation No 468/2014] and pursuant to Article 12(3) of [Regulation No 1024/2013], on-site inspections shall be conducted on the basis of an ECB decision, which shall at a minimum specify the following:

(a) the subject matter and the purpose of the on-site inspection; and

(b) the fact that any obstruction to the on-site inspection by the legal person subject thereto shall constitute a breach of an ECB decision within the meaning of Article 18(7) of [Regulation No 1024/2013], without prejudice to national law as laid down in Article 11(2) of [Regulation No 1024/2013].’

145 In the present case, the letter of 14 February 2019 notifying the applicant of the contested decision states that an inspection, based on Article 12 of Regulation No 1024/2013 and Articles 143 to 146 of Regulation No 468/2014, will be carried out, in accordance with a decision of the Supervisory Board of 10 January 2019. It states that the purpose of that inspection is the credit risk and that it concerns the applicant and its group companies. It indicates that that inspection is scheduled for March 2019 and that the head of the inspection mission will contact the applicant to organise a first meeting.

146 It must be held that, in so far as that letter of 14 February 2019 states that the purpose of the on-site inspection is the credit risk, it does mention in an admittedly summary but sufficiently clear manner, in accordance with Article 143(2)(a) of Regulation No 468/2014, both the subject matter of the inspection, namely credit risk, and its purpose, namely the ECB’s analysis of that risk. In that regard, the ECB was not under an obligation to mention in that letter that there was a suspicion of infringement, which,

moreover, the applicant does not assert (see paragraphs 188 and 226 below).

147 The concept of credit risk is a fundamental concept of banking activity, which is unambiguous and is, in essence, the risk that a borrower will not repay their credit. It is referred to in Article 1 of Regulation No 575/2013, in Article 79 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 is subject, moreover, to Principle 17 of the Core Principles for Effective Banking Supervision drawn up by the Basel Committee on Banking Supervision and published in September 2012 ('the Core Principles for Effective Banking Supervision'), which are not mandatory, but constitute, in their own words, 'the de facto minimum standard for sound prudential regulation and supervision of banks and banking systems'.

148 It should also be noted that, during the meeting held on 5 March 2019, that is to say, several days before the start of the inspection, the head of the inspection mission provided clarifications on the inspection at issue, using a document handed over to the applicant. In particular, it specified the scope of the mission, entitled 'Credit risk and governance', detailing the content of the inspection as regards classification and provisioning, inventory tape (foreclosed assets sold), collateral valuation and funds (assets held for sale), data quality, governance and business model (see page 2 of that document).

149 The contested decision was also adopted in circumstances known to the applicant. The latter was in regular contact with the FCMC, which, for several years, had been closely following the credit risks to which the applicant was exposed, and the FCMC had adopted, in respect of the applicant, as indicated in paragraphs 9 and 12 above, prudential supervision decisions relating, inter alia, to those risks in 2016 and 2017. The applicant was in direct contact with the ECB, given that it had written to the ECB on 5 July and 12 September 2018 requesting it to intervene in its prudential supervision and given that the President of the Supervisory Board of the ECB had replied to the applicant, by letter of 8 October 2018, stating that she shared the FCMC's opinion that the applicant's situation required specific prudential supervision. The applicant was aware of all aspects of the arbitration proceedings, which it had itself brought. Lastly, it was informed of the procedure for the ECB to take over its direct prudential supervision, since the draft decision relating to that had been communicated to the applicant by the ECB's letter of 11 February 2019.

150 Consequently, even though the applicant did not have, on the date its action was brought, the draft decision deemed adopted by the Governing Council, which was confidential under Article 10.4 of Protocol No 4 on the Statute of the European System of Central Banks and of the ECB (see, to that effect, judgment of 19 December 2019, *ECB* v *Espírito Santo Financial (Portugal)*, C-442/18 P, EU:C:2019:1117, paragraphs 43 to 46), it was sufficiently familiar with the grounds of the contested decision for the purposes of assessing its merits.

151 In addition, it should be noted that the applicant received a non-confidential version of the draft decision deemed adopted by the Governing Council following a measure of organisation of procedure adopted by the Court. That draft, the main grounds of which have been set out in paragraphs 23 to 27 above, sets out the recent history of supervision of the applicant and states that deficiencies and infringements of the applicable provisions, which it sets out in detail, were identified over the previous years and were not the subject of appropriate measures on the part of the applicant. It states that the ICSID recommendation prevents the FCMC from implementing all supervisory measures with regard to the applicant, that the ECB is preparing to take over direct prudential supervision of the applicant and that an on-site inspection will enable the ECB to conduct its own analysis of the applicant's situation. It adds that, in conjunction with the planned taking-over of direct supervision of the applicant, the ECB will then be in a position to take the supervisory measures necessary to ensure that the applicant complies with prudential requirements.

152 Thus, that communication enabled the applicant to obtain details of the grounds of the contested decision, on which it was given an opportunity to submit observations at the stage of the reply.

153 Consequently, the seventh plea in law must be rejected as unfounded.

3. The fifth plea in law, alleging infringement of the applicant's right to be heard

154 The applicant submits that the ECB infringed its right to be heard by not giving it an opportunity to comment on the planned on-site inspection before adopting the contested decision.

155 The ECB, supported by the Commission, disputes that argument.

156 As a preliminary point, the Court notes that, in support of the plea alleging infringement of the right to be heard, the applicant merely states briefly that it was not given an opportunity to comment on the planned on-site inspection before the contested decision was adopted.

157 Under Article 41(2) of the Charter, 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.

158 In the present case, no provision of Regulation No 1024/2013 or of Regulation No 468/2014 provides that a decision as regards the inspection of a credit institution is to be preceded by the possibility for that institution to be heard. However, that fact is not, by itself, such as to relieve the ECB of its obligation to hear the entity to which an inspection decision is addressed prior to the adoption of that decision. The right to be heard, which is a fundamental right guaranteed by the Charter, is binding on the ECB without another text expressly providing for it.

159 However, in the first place, although Article 22 of Regulation No 1024/2013, entitled 'Due process for adopting supervisory decisions', provides, in paragraph 1, that the ECB is to give the persons who are the subject of supervisory decisions the opportunity of being heard in accordance with Article 4 and Section 2 of Chapter III, entitled 'Specific supervisory powers', Article 22 does not cover measures adopted in accordance with the provisions of Section 1 of that chapter, entitled 'Investigatory powers'.

160 Moreover, Article 145 of Regulation No 468/2014, entitled 'Procedure and notification of an on-site inspection', provides, in the first sentence of paragraph 1, that the ECB is to notify the legal person subject to an on-site inspection of the ECB decision and of the identity of the members of the on-site inspection team, at least five working days before the start of that inspection, but does not state that the person concerned has the right to be heard.

161 Above all, Article 31 of Regulation No 468/2014, entitled 'Right to be heard', expressly provides, in the last sentence of paragraph 1 of that article, that Section 1 of Chapter III of Regulation No 1024/2013 is not subject to the provisions of that article.

162 Accordingly, the applicable legislation provides that legal persons who are subject to one of the investigatory measures referred to in Section 1 of Chapter III of Regulation No 1024/2013, including an on-site inspection, are not entitled to be heard prior to the adoption of that measure.

163 By providing that the persons concerned are not to be heard before the adoption of an investigatory measure, the applicable legislation is consistent with the nature of such a measure, the sole purpose of which is to gather information (see, to that effect and by analogy, judgment of 26 June 1980, *National Panasonic* v *Commission*, 136/79, EU:C:1980:169, paragraph 21, and Opinion of Advocate General Wahl in *Italmobiliare* v *Commission*, C-268/14 P, not published, EU:C:2015:697, point 119).

164 Furthermore, it follows from Article 22(1) of Regulation No 1024/2013 that decisions by which the ECB decides, where appropriate, to impose prudential measures in the light of information gathered during an investigation must be the subject of a procedure including the right of the persons concerned to be heard.

165 It should also be noted that the fact that an inspection procedure is carried out over a number of months, includes on-the-spot checks and a hearing of the undertaking concerned, the declarations of which are placed on the file, may establish that the undertaking concerned was heard, with full knowledge of the facts, during the inspection (see, to that effect, judgment of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraphs 45 and 46).

166 The Court notes that, in the present case, according to the presentation made by the head of the inspection mission on 5 March 2019, several meetings were to be arranged between the members of the inspection team and the applicant's executives on the relevant matters (see page 5 of that presentation). It is also apparent from that presentation that the sending of a draft inspection report and an 'exit' meeting were planned before the sending of a final report and the 'closing' meeting (see page 7 of that presentation).

167 It follows from the foregoing that a decision by the ECB to conduct an on-site inspection in a credit institution pursuant to Article 12 of Regulation No 1024/2013 is not subject to the right of the entity concerned to be heard before the adoption of that decision.

168 It is after the decision to conduct an on-site inspection and before any adoption of a decision pursuant to Article 4 and Section 2 of Chapter III of Regulation No 1024/2013 that the ECB is required to give the persons concerned the opportunity to be heard.

169 For the sake of completeness, even if the ECB were required to hear the applicant before adopting the contested decision, it should be noted that an infringement of the rights of the defence, in particular the right to be heard, results in the annulment of the decision taken at the end of the administrative procedure in question only if, had it not been for such an irregularity, the outcome of the procedure might have been different (see judgment of 4 April 2019, *OZ* v *EIB*, C-558/17 P, EU:C:2019:289, paragraph 76 and the case-law cited).

170 In the present case, it is not apparent from the documents in the file that, if the applicant had been heard before the contested decision was adopted, the outcome of the procedure might have been different. In that regard, the Court notes that the applicant does not make that argument and that the contested decision was adopted in a context known to the applicant, as stated in paragraph 149 above.

171 The fifth plea in law must therefore be rejected.

4. The second plea in law, alleging infringement of Article 12(1) of Regulation No 1024/2013 in that the contested decision was not necessary within the meaning of that provision, and the fourth plea in law, alleging breach of the principle of proportionality

172 In the second plea in law, the applicant submits that, under Article 12 of Regulation No 1024/2013, an on-site inspection must be necessary. However, the on-site inspection to which it was subject was a retaliatory measure by which the ECB showed that it does not tolerate any criticism. In the letter of 14 February 2019, the ECB did not clearly define the scope and purpose of the on-site inspection. It did not explain how an on-site inspection was necessary in order to analyse the credit risk. That risk has, however, been closely monitored by the FCMC for many years. All of the applicant's credit decisions were monitored by the FCMC and all credit decisions relating to a sum in excess of EUR 50 000 were subject to approval by the FCMC. For a long time, no change has been made to the applicant's credit

portfolio without the FCMC's approval.

173 In the fourth plea in law, the applicant claims that the contested decision breaches the principle of proportionality. The ECB should have used the least intrusive means to achieve the objective pursued. The applicant was always prepared to provide the ECB and the FCMC with all necessary information. It has not been shown that an on-site inspection, in particular carried out by the ECB, could not have been avoided by means of other appropriate investigatory measures. The on-site inspections conducted by the ECB are more restrictive than those carried out by the national competent authorities, in particular because they are conducted by staff who do not speak the language of the country concerned. That is particularly true for Latvia, whose language is not widely spoken outside its borders. Moreover, the inspection timetable was abusive, given that, at the time of the inspection, the applicant carried out its annual audit with a third-party undertaking and the ECB refused to postpone the inspection by one month. The applicant was not able to complete its annual audit in good time and the FCMC imposed a fine on it for that reason.

174 The ECB, supported by the Commission, disputes those arguments.

175 In view of the links between the second and fourth pleas in law, it is appropriate to examine those two pleas together.

176 Under Article 12(1) of Regulation No 1024/2013, the ECB may conduct all necessary on-site inspections at the business premises of institutions subject to prudential supervision, including credit institutions established in the participating Member States.

177 The qualifier 'necessary' used in Article 12(1) of Regulation No 1024/2013 is consistent with the principle of proportionality, which requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 50, and of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 206).

178 The assessment of the proportionality of a measure must be reconciled with compliance with the discretion that may have been conferred on the EU institutions at the time it was adopted (see judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 53 and the case-law cited). The ECB has a broad discretion when it adopts, as in the present case, a measure relating to the prudential supervision of a credit institution (see, to that effect, judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 86).

179 In accordance with the case-law cited in paragraph 177 above, the need for and proportionality of an on-site inspection must be assessed in the light of the objectives pursued by the legislation.

180 In that regard, it should be noted that the objective of prudential supervision of credit institutions is to ensure the safety and soundness of those institutions, the stability of the financial system and the protection of depositors (see recitals 30 and 65 of Regulation No 1024/2013).

181 Sound management of credit risk by credit institutions is one of the principal objectives of prudential supervision, as is apparent from Article 1 of Regulation No 575/2013, Article 79 of Directive 2013/36 and, moreover, from Principle 17 of the Core Principles for Effective Banking Supervision.

182 Furthermore, it should be noted that each credit institution is subject to 'ongoing' prudential supervision by the competent authorities (see recital 37 of Regulation No 1024/2013, recital 3 of Directive 2013/36 and recital 25 of Regulation No 575/2013).

183 The competent authorities have, in accordance with Articles 14 to 16 of Regulation No 1024/2013 and Article 104 of Directive 2013/36, powers enabling them to withdraw, from a credit institution, the authorisation necessary to carry on its business, to oppose the acquisition of a holding in that institution and to impose supervisory measures, in particular the strengthening of its governance, the improvement of its capital or liquidity situation, the restriction of economic activity, the divestment of activities or the removal of a member of a management body.

184 The competent authorities also have, in accordance with Articles 9 to 13 of Regulation No 1024/2013 and Article 65(3) of Directive 2013/36, investigatory powers enabling them to require all information necessary for them to carry out their tasks, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes, to conduct investigations and to carry out on-site inspections. Recital 47 of Regulation No 1024/2013 states that the ECB should be able to require all necessary information, and to conduct investigations and on-site inspections 'in order to carry out its tasks effectively'.

185 The competent authorities are to carry out, in accordance with Articles 97 and 99 of Directive 2013/36, a supervisory review and evaluation. They are to establish the frequency and intensity of the review and evaluation, having regard to the size, systemic importance, nature, scale and complexity of the activities of the institution concerned and taking into account the principle of proportionality. The review and evaluation is to be updated at least on an annual basis for institutions covered by the supervisory examination programme. That programme, which includes a plan for on-site inspections, covers institutions for which the results of stress tests or the outcome of the supervisory review and evaluation indicate significant risks to their financial soundness or indicate breaches of relevant provisions, institutions that pose a systemic risk to the financial system and any other institution if the competent authorities deem it to be necessary. The competent authorities may, if appropriate in the light of Article 97, implement measures such as an increase in the number or frequency of on-site inspections of the institution or the permanent presence of the competent authority at the institution.

186 Principles 9 and 10 of the Core Principles for Effective Banking Supervision provide, moreover, that the supervisory authority is to deploy its resources in proportion to the risk profile and systemic importance of the bank. They state that that authority is to apply an appropriate mix of on-site and off-site checks. First, the supervisory authority is to analyse the prudential reports and statistical returns provided by the banks. Second, it verifies the reports provided by the banks, on demand and at regular intervals, independently, by carrying out on-site checks or by using external auditors. It is in regular contact with the board of directors, external administrators, and senior and middle management. It meets regularly with the senior management and board of directors. It may call on independent third parties but may not delegate its prudential responsibilities to third parties.

187 It follows from the recitals, provisions and principles referred to in paragraphs 182 to 186 above that credit institutions are subject to 'ongoing' prudential supervision, which is based on a combination of off-site checks, carried out on the basis of information regularly communicated to the competent authorities, and on the basis of on-site checks, enabling the information provided to be verified. Off-site checks cannot, in principle, replace on-site inspections, which, inter alia, enable the competent authority to verify independently the information declared by those institutions.

188 It should be pointed out that, unlike inspections carried out by the Commission on the basis of Article 20(4) of Regulation No 1/2003, the purpose of which is to detect infringements of Articles 101 and 102 TFEU, the purpose of the on-site inspections carried out by the ECB is to verify, in the context

of ongoing supervision combining off-site and on-site checks, that credit institutions ensure sound management and coverage of their risks and that the information communicated is reliable, so that the implementation of those inspections is not subject to the existence of a suspicion of an infringement. Moreover, that is not disputed by the applicant.

189 The conclusion in paragraph 188 above is not contradicted by the wording of the second sentence of Article 13(2) of Regulation No 1024/2013, according to which, in its control of the proportionality of the coercive measures, the national judicial authority may ask the ECB for detailed explanations, in particular relating to the grounds the ECB has for suspecting that an infringement of the acts referred to in the first subparagraph of Article 4(3) of that regulation has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures.

190 The second sentence of Article 13(2) of Regulation No 1024/2013 concerns not the need for the on-site inspection, but the control of the proportionality of the planned coercive measures, in particular where it is found that a person opposes an inspection.

191 Lastly, it follows from the provisions, recitals and principles referred to in paragraphs 182 to 186 above that the frequency and intensity of on-site inspections are set taking into account the principle of proportionality.

192 In the present case, first, it is apparent from the contested decision that deficiencies and infringements of the applicable provisions were identified by the FCMC during the years preceding the inspection and that the applicant did not adopt appropriate measures to address the prudential concerns arising from those findings.

193 In that regard, it should be noted that, in support of the second and fourth pleas in law, the applicant does not put forward any argument to dispute the reality of the deficiencies and infringements of the applicable provisions referred to in the contested decision. In particular, it does not claim to have challenged, before the national courts, the FCMC's decisions adopted in February 2016 and August 2017, and does not explain the outcome of any court proceedings. It does not dispute the finding in the contested decision that it did not adopt appropriate measures to address the relevant prudential concerns.

194 Secondly, the applicant's argument that it was prepared to provide the ECB with any necessary information cannot succeed, since such a provision of information was not equivalent to the possibility for the ECB to verify on-site the integrity and reliability of the information transmitted and to have meetings on various subjects with the applicant's representatives.

195 Thirdly, the fact that the credit risk to which the applicant was exposed was closely monitored by the FCMC for a number of years, meaning in particular that all the applicant's decisions relating to an amount exceeding EUR 50 000 were subject to the FCMC's approval, does not call into question the need for the on-site inspection. That monitoring supports the attention paid by the FCMC to the credit risk and does not contradict the ground of the contested decision according to which the applicant did not take appropriate measures to remedy the already identified shortcomings and infringements of the applicable provisions.

196 Fourthly, the applicant is not entitled to claim that the contested decision is a retaliatory measure against it. In that regard, the statements by a member of the Administrative Board of Review of the ECB, made at a conference on 21 November 2017, according to which, in the event of a formal procedure initiated by a credit institution against it, the competent authority could react by intensifying its supervision, do not constitute sufficient probative evidence that the contested decision is a retaliatory

measure, given that those brief statements were made ‘personally’, do not necessarily imply retaliation and are not detailed.

197 Fifthly, the argument that, in the letter of 14 February 2019 of the Director-General, the ECB did not clearly set out the scope and purpose of the on-site inspection and did not explain how an inspection was necessary in order to analyse the credit risk must be rejected. The question of whether that letter of 14 February 2019 contains an adequate statement of reasons has already been examined in paragraphs 145 to 150 above and concerns, in any event, a notification formality, provided for in Article 145 of Regulation No 468/2014, which must be distinguished from the question of whether the contested decision is well founded, which is concerned with the substantive legality of the contested measure, in accordance with the case-law referred to in paragraph 143 above.

198 Sixthly, the applicant’s argument that the inspections conducted by the ECB are more onerous than those of the national competent authorities must be rejected as having no factual basis.

199 First, as the ECB submits, the inspections that it conducts and those carried out by the national competent authorities are based on the same standards. Moreover, that is not disputed by the applicant. Second, as the ECB also submits, the use of English by the inspection staff cannot be regarded in the present case as a significant constraint, given that the applicant’s representatives were not obliged to communicate in that language with the members of the inspection team, and given that the applicant also subsequently chose English as the only language of communication with the ECB.

200 Furthermore, the fact that the ECB’s inspections are more onerous than those of national competent authorities does not, in any event, establish that they are disproportionate.

201 Seventhly and lastly, it has not been shown that the timetable for the inspection was abusive. In that regard, the Court notes that the inspection began more than three weeks after receipt of the letter of 14 February 2019 and that it was preceded by a ‘kick-off’ meeting containing details of the sequence of the inspection, which enabled the applicant to take organisation measures before the start of the inspection. The fact that the applicant carried out the annual audit of its accounts during the inspection does not demonstrate that that timetable was abusive. On the one hand, to require the ECB to postpone an inspection solely on the ground that the credit institution has to carry out the annual audit of its accounts would risk undermining the objective of financial stability, when Article 6(5) of Regulation No 1024/2013 provides, on the contrary, that the ECB may ‘at any time’ exercise its power to carry out an on-site inspection. On the other, it has not been established that the inspection prevented the applicant from completing the annual audit of its accounts in good time. In that regard, it should be noted that, first, it is for credit institutions to take the necessary measures to comply with the statutory deadlines for the submission of their audited accounts, secondly, according to the FCMC’s decision of 14 May 2019 imposing a penalty on the applicant, the latter had already recorded delays in the submission of its accounts in 2017 and, thirdly, the applicant’s delay in submitting its audited annual accounts can also be explained, if necessary, by the lack of means used by the audit team.

202 In those circumstances, the ECB was fully entitled to take the view, in the exercise of its broad discretion, that an on-site inspection at the applicant’s premises was necessary within the meaning of Article 12(1) of Regulation No 1024/2013, in order to carry out an examination of the credit risk to which the applicant was exposed, and, more broadly, to ensure the soundness of that institution, the stability of the financial system and the protection of depositors. Moreover, it has not been established that the ECB could have used a less onerous measure than the on-site inspection which it carried out or that the problems caused by that inspection measure were disproportionate to the objective pursued.

203 It follows from the foregoing that the second and fourth pleas in law must be rejected as unfounded.

5. The third plea in law, alleging infringement of Article 12(1) of Regulation No 1024/2013 in that the ECB did not properly exercise its discretion, and the sixth plea in law, alleging infringement of the ECB's obligation to examine and assess carefully and impartially all the relevant aspects of the individual case

204 In the third plea in law, the applicant claims that the ECB failed to take account of the discretionary nature of a decision to conduct an on-site inspection. It has not been demonstrated that the ECB exercised its discretion as to whether an on-site inspection was appropriate. The absence of any 'relevant' consideration is apparent from the very unusual nature of a decision by the ECB to conduct an on-site inspection at a less significant credit institution.

205 In the sixth plea in law, the applicant submits that the ECB failed to fulfil its obligation, in accordance with the case-law, to examine carefully and impartially all the 'relevant' aspects of the individual case. The ECB failed to take into consideration the extensive relevant information available to the FCMC concerning any credit risk.

206 The ECB, supported by the Commission, contends that the third and sixth pleas in law must be rejected.

207 As a preliminary point, it must be held that the third plea in law must be regarded as alleging an error of law, to the effect that the ECB did not exercise its discretion to decide whether an on-site inspection was appropriate, as required by Article 12(1) of Regulation No 1024/2013, which is apparent in particular from the fact that the Director-General's letter of 14 February 2019 does not mention any 'relevant' circumstance.

208 By its sixth plea in law, the applicant again raises a plea alleging an error of law, in that the contested decision is vitiated by a failure to examine carefully and impartially the 'relevant' aspects of the present case.

209 It is appropriate to examine those two pleas simultaneously, given that they both seek to criticise the ECB for having erred in law by not examining or by not assessing the relevant elements of the present case.

210 In that regard, it should be noted that, where an applicant raises pleas alleging errors of law of that nature, it is for the applicant to adduce evidence to support the conclusion that there was such an error.

211 In support of those pleas, the applicant submits, in summary form, that the Director-General's letter of 14 February 2019 is devoid of 'any relevant considerations'. The applicant states that an on-site inspection by the ECB is unusual in a less significant credit institution and that the ECB failed to take into account the large amount of information available to the FCMC regarding the credit risk to which the applicant was exposed.

212 However, it is apparent from the draft decision deemed adopted by the Governing Council, in particular its annex, that the ECB took into account the information available to the FCMC concerning the credit risk to which the applicant was exposed. It is also apparent that the ECB took account of the fact that the applicant was a less significant credit institution, finding on two occasions that that did not prevent the on-site inspection from being carried out, as noted in paragraph 137 above. Lastly, it follows that the ECB duly assessed whether an on-site inspection was appropriate and concluded that it indeed was, taking into account, in particular, the deficiencies and infringements of the applicable provisions which had been identified in previous years and the fact that the applicant had not taken appropriate measures to remedy them.

213 It follows from the foregoing, as from the response to the second and fourth pleas in law, that the applicant is not entitled to claim that the ECB did not examine the relevant circumstances of its situation or did not assess whether an on-site inspection was necessary in the light of those circumstances.

214 The third and sixth pleas in law must therefore be rejected as unfounded.

6. The eighth plea in law, alleging breach of the principles of the protection of legitimate expectations and legal certainty

215 The applicant submits that the contested decision breaches the principles of the protection of legitimate expectations and legal certainty because its scope and purpose are not clear. Given that the Director-General's letter of 14 February 2019 mentions only the credit risk, the applicant is not in a position to know the scope of the binding effect of the letter and to ascertain to what extent a failure to comply with a request by the inspection staff could be regarded as an obstruction. That letter even states that the scope of the inspection could be extended without any limit during that inspection. However, the Guide to Banking Supervision states that an on-site inspection must have a pre-defined scope. The questions raised by the inspection staff covered many areas of no relevance to the analysis of credit risk. Certain questions did not have a discernible prudential supervision objective, but belonged more to a thorough anti-money laundering investigation, an area in which the ECB is not the competent authority, even in relation to significant institutions. Moreover, even in the context of an anti-money laundering investigation, the request made to the applicant to provide information on all incoming and outgoing payments for all its customers over the previous two years would have been unreasonable.

216 The ECB, supported by the Commission, disputes those arguments.

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

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

219 The contested decision states that the purpose of the inspection is an in-depth investigation into the risks, risk control and governance of the applicant, in order to assess, inter alia, its procedures, systems and the quality of its management, and that that inspection will focus primarily on the credit risk.

220 The fact that the letter from the Director-General of 14 February 2019 stated that the purpose of the on-site inspection was the credit risk does not breach the principles of legal certainty and the protection of legitimate expectations.

221 Credit risk is a fundamental concept of banking activity, as stated in paragraph 147 above, which is understood by those involved in that sector. Moreover, the scope of the inspection was explained in more detail at the meeting of 5 March 2019, several days before the inspection began. As stated in paragraph 33 above, the head of the inspection mission explained, using a document handed over to the

applicant, the scope of the mission, entitled ‘Credit risk and governance’, namely classification and provisioning, inventory tape (foreclosed assets sold), collateral valuation and funds (assets held for sale), data quality, and governance and business model.

222 In those circumstances, the applicant is not entitled to claim that that letter of 14 February 2019, in so far as it referred to credit risk, was not clear and that, consequently, it could not ascertain to what extent a failure to comply with a request from the inspection staff could be regarded as an obstacle to the inspection.

223 Furthermore, the fact that the letter from the Director-General of 14 February 2019 stated that the scope of the inspection could be extended during the inspection and that, in that event, the applicant would be informed of the extension by the Head of Mission on behalf of the ECB does not breach the principles of legal certainty and the protection of legitimate expectations.

224 That letter of 14 February 2019 stated that the applicant would be informed in advance regarding such an extension of the scope of the inspection. It is therefore apparent from that letter that, if the applicant was not informed of an extension, the subject matter of the inspection would remain limited to credit risk.

225 As regards the applicant’s argument that paragraph 69 of the Guide to Banking Supervision states that on-site inspections must have a predefined scope, it must be held that that was indeed the case for the inspection at issue, since it was focused on a specific risk.

226 Moreover, according to paragraph 73 of the Guide to Banking Supervision, on-site inspections may be ‘full-scope’, that is to say, cover a broad spectrum of risks and activities in order to provide a holistic view of the credit institution, or ‘targeted’, that is to say, focus on a particular part of the credit institution’s business, or on a specific issue or risk, or ‘thematic’, that is to say, focus on one issue (for example, business area or types of transactions) across a group of peer credit institutions. It states that joint supervisory teams, which include ECB staff and national competent authorities, may request a thematic review of a particular risk control or of the governance process across institutions. It states that thematic reviews may also be triggered on the basis of macro-prudential and sectoral analyses that identify threats to financial stability on account of weakening economic sectors or the spread of risky practices across the banking sector.

227 The complaint based on the claim that, during the inspection, inspection staff requested the disclosure of information unrelated to the credit risk must be rejected as ineffective.

228 The conditions for the implementation of an inspection decision based on Article 12 of Regulation No 1024/2013 do not, as such, affect the lawfulness of that decision, given that they concern facts subsequent to that decision (see, to that effect, judgment of 28 January 2021, *Qualcomm and Qualcomm Europe* v *Commission*, C-466/19 P, EU:C:2021:76, paragraph 82 and the case-law cited). The legality of such a decision cannot therefore depend on the manner in which the inspection staff implement the decision.

229 It should be noted that, where inspection staff request the disclosure of information going beyond the subject matter of the inspection, the entity concerned has the right to refuse to provide such information, unless the ECB, by using coercive measures, enforces the decision concerned.

230 If the ECB decides to adopt a decision imposing a sanction on a legal person for obstructing an inspection, pursuant to Article 18(7) of Regulation No 1024/2013, that decision may be the subject of an action before the General Court. In the context of such an action, the legal person concerned may claim, if it considers that it is entitled to do so, that the inspection staff requested the disclosure of

information going beyond the subject matter of the inspection.

231 The entity concerned may also, without refusing a request to disclose information in the context of an inspection, raise objections to that disclosure and request the ECB not to use the information at issue on the ground that it does not fall within the scope of the subject matter of the inspection. A refusal by the ECB to accede to the legitimate requests of the legal person concerned is capable of rendering the ECB liable and, where appropriate, of vitiating the acts subsequently adopted by the ECB.

232 In any event, in support of its argument that the inspection staff requested the disclosure of information unrelated to the credit risk, the applicant refers, first of all, in a general manner, to Annex A.12, which contains requests for information sent in writing to the applicant by the inspection staff in March and April 2019. By merely stating that that annex, which is approximately 10 pages long, contains examples of questions unrelated to the credit risk, without identifying the relevant questions and without stating the reasons why those questions are irrelevant for the analysis of the credit risk, the applicant does not place the Court in a position to assess the merits of its argument (see, to that effect, judgment of 13 June 2013, *Versalis* v *Commission*, C-511/11 P, EU:C:2013:386, paragraph 115).

233 Although the applicant goes on to submit specifically that the ECB requested it to provide information on the incoming and outgoing payments of the bank's clients during the previous two years, which is indeed apparent from Annex A.12, it does not state that it raised an objection to that written request by the inspection staff. However, even if that request went beyond the scope of the inspection or if it was disproportionate in view of the amount of information requested, it does not demonstrate that the contested decision itself, which is unambiguous, infringes the principles of the protection of legitimate expectations and legal certainty.

234 The eighth plea in law must therefore be rejected.

7. The ninth plea in law, alleging breach of the principles of equal treatment and non-discrimination

235 The applicant submits that the contested decision infringes the principle of equal treatment. On-site inspections at less significant credit institutions are very rare and the ECB has not explained why it adopted that unusual measure in the present case. Account should also be taken of the fact that the ECB failed to answer the questions raised by the applicant in its letters of 5 July and 12 September 2018 concerning the problems of corruption and the hostile comments made publicly by Latvian officials. The ECB has not demonstrated that it conducted an investigation in that regard and has not acknowledged that A's public threats were inappropriate. The judgment of 26 February 2019, *Rimšēvičs and ECB* v *Latvia* (C-202/18 and C-238/18, EU:C:2019:139), did not resolve the problem, given that the Court of Justice annulled the measures imposed by the Republic of Latvia against A because the Republic of Latvia had not submitted evidence of the acts of corruption in good time. The contested decision was therefore adopted even though solid evidence supported the complaints of corruption and illegal conduct and the ECB refused to investigate and rectify that situation. The applicant concludes from this that, in the absence of any justification, the unusual treatment to which it was subject must be interpreted as a discriminatory act, bearing in mind that, in the meantime, A was reinstated in his post as Governor of the Central Bank of Latvia.

236 The ECB disputes the applicant's arguments.

237 The principle of equal treatment, as a general principle of EU law, requires comparable situations not to be treated differently and different situations not to be treated in the same way, unless such treatment is objectively justified (see judgment of 6 June 2019, *P. M. and Others*, C-264/18, EU:C:2019:472, paragraph 28 and the case-law cited).

238 A breach of the principle of equal treatment as a result of different treatment presumes that the situations concerned are comparable, having regard to all the elements which characterise them (judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 25).

239 In the first place, the applicant does not state which institutions were in a situation comparable to its own and were not treated in the same way.

240 In the second place, even if the applicant is complaining of discriminatory treatment in comparison with less significant credit institutions which were not the subject of an inspection conducted by the ECB itself, it should be noted that not only does the ECB have the power to conduct inspections in less significant credit institutions, but that it has in fact done so in institutions other than the applicant, as the ECB contends and as, moreover, the applicant acknowledges.

241 Although it is apparent from the documents in the file that the inspections conducted by the ECB itself in less significant credit institutions are indeed considerably less frequent than those carried out by the ECB in institutions considered to be significant, it must be held that the grounds of the contested decision, in particular the ground that the ICSID recommendation prevented the FCMC from implementing all supervisory measures in respect of the applicant, are such as to explain how the applicant's situation was a particular one, and therefore not comparable to the situations of other less significant credit institutions not subject to an on-site inspection by the ECB and, therefore, why the ECB decided in the present case to carry out such an inspection itself.

242 If the applicant is complaining of discriminatory conduct in comparison with credit institutions the main shareholder of which, unlike the applicant, did not complain of acts of corruption, it must be held that it is apparent from the grounds of the contested decision that the latter is not based on the existence of such a complaint.

243 In addition, first, it should be noted that (i) the criminal investigation which gave rise to A being charged concerns not the applicant, but a third-party Latvian bank, and (ii) as regards the acts of corruption complained of by CR, the applicant states, without providing further details, that the investigation is ongoing.

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

245 Moreover, even if the ECB made an error by not conducting an investigation into the acts of corruption complained of by CR, or into the comments made by A in respect of the applicant, it has not been demonstrated that that error was such as to render unlawful the contested decision in which a conclusion is reached not on whether it is appropriate to conduct such an investigation, but on the appropriateness of carrying out an on-site inspection.

246 Thirdly, it should be noted that the contested decision appears to respond in part favourably to the applicant's requests which are set out in its letters of 5 July and 12 September 2018 and referred to in paragraph 18 above, since the effect of that decision was that the ECB would intervene more closely in the prudential supervision of the applicant.

247 Consequently, since the contested decision is not contrary to the principle of equal treatment, the ninth plea in law must be rejected as unfounded.

8. The tenth plea in law, alleging infringement of Article 19 and recital 75 of Regulation No 1024/2013 and misuse of powers

248 The applicant submits that Article 19 and recital 75 of Regulation No 1024/2013 require the ECB to carry out the tasks entrusted to it irrespective of any undue political influence. ECB decisions must not be influenced by any non-prudential considerations.

249 The applicant states that the contested decision is a retaliatory measure adopted because it and its shareholders complained of illegal conduct by a member of the Governing Council of the ECB. That is apparent from the decision by which the ECB decided to take over the direct prudential supervision of the applicant, the sole reason for which was the applicant's initiation of arbitration proceedings, that is to say, the legitimate exercise of a legal remedy. That is also apparent from the letter of 14 February 2019 from the Director-General, who did not provide any reasons in support of the unusual decision to conduct an on-site inspection in a less significant credit institution.

250 The applicant submits that account should be taken of the ECB's failure to respond to its attempts to engage in a dialogue on the problems of corruption, the unfair regulatory treatment to which it was subjected and the hostile and inappropriate comments which were made publicly by Latvian officials, in particular the threat made by A that there would be a withdrawal of authorisation. Those corruption problems are widely recognised, including by the Latvian authorities, the Organisation for Economic Co-operation and Development (OECD) and the United States of America. In February 2018, those corruption problems led to A's detention and to security measures, which in practice prevented A from performing his duties as Governor of the Central Bank of Latvia and as a member of the Governing Council of the ECB. The ECB's only reaction was to bring an action before the Court of Justice (Case C-238/18) in order to defend its independence against alleged interference by the Republic of Latvia. The ECB took no steps to investigate and rectify the problems at issue in order to restore confidence in the regulatory process. In response to the ECB's action, the Republic of Latvia confirmed that there was evidence proving A's acts of corruption, but did not provide that evidence. The applicant submits that, in the present case, it is for the ECB, and not the applicant, to prove that prudential supervision is carried out in a lawful manner.

251 The applicant concludes from this that, in the present case, the ECB did not investigate serious issues relating to the quality of the prudential supervision, but adopted the unusual decision to conduct an on-site inspection in a less significant credit institution without providing any reasons whatsoever. That should be interpreted as conveying the message that criticism of the regulatory authorities leads to heavy retaliation.

252 The applicant requests the General Court to order the ECB and the Republic of Latvia to disclose all relevant correspondence between the ECB and the FCMC so that the real reasons for the contested decision can be determined.

253 The ECB disputes that line of argument.

254 Under Article 19(1) of Regulation No 1024/2013, when carrying out the tasks conferred on it by that regulation, the ECB and the national competent authorities acting within the SSM are to act independently and the members of the Supervisory Board and the steering committee are to act independently and objectively in the interest of the European Union as a whole and are neither to seek nor take instructions from the institutions or bodies of the European Union, from any government of a Member State or from any other public or private body.

255 Recital 75 of that regulation states that, in order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular free from undue

political influence and from industry interference which would affect its operational independence.

256 A measure is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken solely, or at the very least primarily, for purposes other than those for which the power in question was conferred or with the aim of evading a procedure specifically prescribed by the FEU Treaty for dealing with the circumstances of the case (judgments of 14 December 2004, *Swedish Match*, C-210/03, EU:C:2004:802, paragraph 75, and of 8 December 2020, *Hungary* v *Parliament and Council*, C-620/18, EU:C:2020:1001, paragraph 82).

257 In the first place, in order to attempt to demonstrate that the contested decision is a retaliatory measure adopted because the applicant and its shareholders complained of the unlawful conduct by a member of the Governing Council of the ECB, the applicant relies on the grounds of the ECB's decision, notified by letter of 1 March 2019, classifying the applicant as a significant institution subject to direct prudential supervision by the ECB.

258 However, even if that decision of the ECB were unlawful, it would have no effect on the lawfulness of the contested decision, which is not based on the decision relied on by the applicant.

259 In addition, contrary to what the applicant claims, the ECB's decision to take over direct prudential supervision of the applicant was not adopted on the ground that the applicant initiated the arbitration proceedings. In that decision, the ECB relied not on the initiation of those proceedings, as such, but, in essence, on the ground that, following the ICSID recommendation made in the context of those proceedings, the FCMC considered itself to have no capacity to carry out high-level supervision of the applicant and had requested the ECB to take over the prudential supervision of the applicant.

260 The applicant is therefore not entitled to claim that the ECB's decision to take over the direct prudential supervision of the applicant is based on the legitimate exercise of a legal remedy, namely the initiation of the arbitration proceedings, or, in any event, that the ECB's reasons demonstrate its desire to adopt retaliatory measures against the applicant for having initiated such proceedings.

261 In the second place, the contested decision sets out the grounds on which the ECB decided to conduct an on-site inspection at the applicant's premises.

262 It is apparent from those grounds that the contested decision was adopted with an aim consistent with prudential legislation. In so far as the contested decision is based on deficiencies and infringements relating to prudential requirements identified over previous years, it is consistent with the objective of financial stability. In so far as the ECB took account of the fact that the ICSID recommendation prevented the FCMC from implementing all the supervisory measures in respect of the applicant and decided itself to conduct an on-site inspection at the applicant's premises, it did not pursue an objective unrelated to its prudential supervision mission, but merely implemented, taking into account that recommendation, a form of prudential supervision expressly provided for in Article 6(5)(d) of Regulation No 1024/2013.

263 Furthermore, it is apparent from the response to the second and fourth pleas in law that the ECB did not misconstrue the scope of its discretion in taking the view that an on-site inspection was necessary within the meaning of Article 12(1) of Regulation No 1024/2013 and consistent with the principle of proportionality, which is an additional factor in support of the finding that the ECB did not vitiate its decision by a misuse of powers.

264 In the third place, for the same reasons as those stated in paragraphs 243 to 245 above, the applicant's argument that the ECB did not open an investigation into the acts of corruption complained of by CR or into the statements made by A following his arrest is not probative evidence capable of demonstrating

that the ECB's aim, in adopting the contested decision, was to take a retaliatory measure against the applicant in relation to the reporting of those acts of corruption.

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

266 In the fifth place, although the applicant claims that A was a member of the Governing Council of the ECB, the contested decision was adopted on 21 January 2019, whereas, according to the applicant, on that date, the security measures adopted by the KNAB on 19 February 2018 in practice prevented A from performing his duties as a member of the Governing Council of the ECB and from sitting within that body.

267 Lastly, in the light of the considerations set out in paragraphs 257 to 266 above, there is no need to grant the applicant's request that the Court order the ECB and the Republic of Latvia to disclose 'all relevant correspondence between the ECB and the FCMC [concerning the applicant] so [as] to determine the true motivation behind the Contested Decision'.

268 The Court has before it the information enabling it to resolve the present dispute and considers, inter alia, that the grounds of the contested decision are apparent from that decision.

269 Thus, it is not apparent from the documents in the file that the contested decision was adopted in breach of Article 19 of Regulation No 1024/2013. Nor does it appear, on the basis of a body of objective, relevant and consistent evidence, that the contested decision was adopted with the aim of retaliation against the applicant in relation to the complaints as to A's allegedly illegal conduct or that the contested decision is, for that reason, vitiated by a misuse of powers.

270 The tenth plea in law must therefore be rejected as unfounded.

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

VI. Costs

272 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 incurred by the ECB, in accordance with the form of order sought by the ECB.

273 The Commission shall bear its own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders PNB Banka AS to bear its own costs and pay those incurred by the European Central Bank (ECB);

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

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 7 December 2022.

E. Coulon S. Papasavvas

Registrar President

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* Language of the case: English.