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 – Article 6(5)(b) of Regulation (EU) No 1024/2013 – Need for the ECB's direct supervision of a less significant credit institution – Request by the national competent authority – Article 68(5) of Regulation (EU) No 468/2014 – ECB decision classifying PNB Banka as a significant entity subject to its direct prudential supervision – Obligation to state reasons – Proportionality – Rights of the defence – Access to the administrative file – Report laid down in Article 68(3) of Regulation No 468/2014 – Article 106 of the Rules of Procedure – Request for a hearing lacking a statement of reasons)

In Case T-301/19,

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 D. Segoin, acting as Agents,

defendant,

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 1 March 2019, to classify the applicant as a significant entity subject to its direct prudential supervision ('the contested decision').

I. Legal context

2 Article 6(5)(b) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63) provides: 'With regard to [less significant] credit institutions, and within the framework defined in paragraph 7 [of this article], when necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national competent authorities or upon request by a national competent authority, decide to exercise directly itself all the relevant powers for one or more [less significant credit institutions], including in the case where financial assistance has been requested or received indirectly from the [European Financial Stability Facility (EFSF)] or the [European Stability Mechanism (ESM)]'.

3 Article 67 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (OJ 2014 L 141, p. 1), entitled 'Criteria for an ECB decision pursuant to Article 6(5)(b) of [Regulation No 1024/2013]', lists, in paragraph 2, various factors which the ECB must take into account, inter alia, before taking a decision to exercise directly the prudential supervision of, inter alia, a less significant supervised entity.

4 Article 68 of Regulation No 468/2014, entitled 'Procedure for preparing an ECB decision pursuant to Article 6(5)(b) of [Regulation No 1024/2013] at the request of a national competent authority, provides:

'…

3. The [national competent authority's] request shall be accompanied by a report indicating the supervisory history and risk profile of the relevant less significant supervised entity or less significant supervised group.

…

5. If the ECB decides that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB decision in accordance with Title 2 [of Part IV of this regulation].'

II. Background to the dispute

5 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').

6 On the date on which the action was brought, CR was the applicant's main shareholder.

7 According to the applicant, on 25 August 2017, the applicant, together with CR and other members of his family, who 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.

8 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 A to obtain, through his influence over the FCMC, bribes from CR.

9 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.

10 On 16 November 2017, FCMC requested the ECB to take over the direct prudential supervision of the applicant. That request was based in particular on three elements: first, the results of an on-site inspection conducted by the FCMC and the impact of those results on the applicant's capital adequacy ratio; second, the persistent breach of the large exposure limit, the elimination of which could have an additional negative impact on the capital adequacy ratio; and, third, the notification by the applicant and its main shareholder of a dispute relating to investment protection.

11 After examining the request referred to in paragraph 10 above at a meeting of the Supervisory Board on 28 November 2017, the ECB refused that request.

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

13 According to the applicant, in December 2017, CR reported to the Latvian authorities the acts of corruption referred to in paragraph 8 above.

14 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.

15 On 28 June 2018, A was charged by the prosecutor leading the investigation referred to in paragraph 14 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.

16 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 8 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).

17 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').

18 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 and recovery measures as well as 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.

19 On 21 December 2018, the FCMC again requested the ECB to take over the direct prudential supervision of the applicant. It reiterated its previous request of 16 November 2017 and referred to the ICSID recommendation. It stated that several months could elapse before ICSID took a decision on provisional measures, which meant that the FCMC would be prevented from carrying out its supervisory tasks for an indefinite period. According to the FCMC, the taking over of direct prudential

supervision by the ECB prevents the applicant from using an alleged conflict of interests as an argument against prudential supervision and makes it possible to avoid a situation in which a bank constantly fails to meet its obligations and where the regulator is prevented from taking the appropriate measures to put an end to those actions. The FCMC took the view that the information already in the ECB's possession would facilitate the transfer of supervisory tasks. It stated that its decision of 27 February 2018 had not been implemented, that is to say that the applicant's situation was still contrary to the capital requirements and large exposure limits, and that no viable and credible solution was foreseeable in the near future. It stated that, since the commencement of the arbitration proceedings, the applicant's reaction to almost all the monitoring activities did not demonstrate an intention to implement successful cooperation. It indicated that, according to the applicant, each request by the FCMC was the subject of the arbitration dispute and constituted additional evidence of an arbitrary approach. It added that CR stated that he would implement the FCMC's requests, namely the strengthening of the applicant's capital, only if those requests were verified by an independent third party. It concluded that it was unable to exercise a high level of supervision over the applicant.

20 On 11 February 2019, the ECB sent to the applicant, for its observations, a draft decision for the ECB to take over the direct prudential supervision of the applicant.

21 On 22 February 2019, the applicant replied that it rejected the claim that it had not demonstrated its willingness to engage in successful cooperation. It stated that, on the contrary, until then, neither the FCMC nor the ECB had responded appropriately to its multiple attempts and to those of its shareholders to seek constructive cooperation, in particular as regards the acts of corruption of which the ECB was aware. The applicant concluded that it was opposed to that draft decision.

22 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 the Statute of the European System of Central Banks and of the ECB.

23 On 1 March 2019, the Secretary of the Governing Council of the ECB notified the applicant of the contested decision, adopted on the basis of a proposal from the Supervisory Board based on Article 26(8) of Regulation No 1024/2013, pursuant to the provisions of Article 6(5)(b) of that regulation in conjunction with Article 39(5) of Regulation No 468/2014.

24 The Secretary of the Governing Council stated that the ECB, as the competent authority, would be responsible for the direct supervision of the applicant. He stated that the contested decision had been adopted in accordance with Article 6(5)(b) of Regulation No 1024/2013 and Part IV of Regulation No 468/2014. He added that the applicant would be included in the list of entities subject to its direct supervision, which the ECB published and updated in accordance with Article 49(1) of Regulation No 468/2014.

25 As regards the facts on which the contested decision was based (Part 1 of that decision), the Secretary of the Governing Council stated that the applicant did not meet the criteria laid down in Article 6(4) of Regulation No 1024/2013 and was therefore currently classified as a less significant entity subject to direct prudential supervision by the FCMC. He set out the composition of the applicant's shareholders and the structure of the group. He mentioned the commencement of arbitration proceedings and the ICSID recommendation. He also referred to the stages of the administrative procedure which preceded the contested decision.

26 As regards the factual assessment (Part 2 of the contested decision), the Secretary of the Governing Council stated that the ECB had considered that the taking-over of direct prudential supervision of the applicant was necessary in order to ensure consistent application of high-level prudential supervision. That conclusion is based on the following considerations. In its request, the FCMC stated that, since the bringing of the arbitration proceedings, the applicant's reaction to almost all the supervisory activities continued to demonstrate no willingness to implement successful cooperation. The FCMC considered itself completely unable to exercise high-level supervision of the applicant in accordance with EU and SSM standards. The FCMC was of the view that the most suitable option for ensuring appropriate supervision of the applicant was for the ECB to take over the prudential supervision. The Secretary of the Governing Council concluded that, according to the ECB, the taking-over of direct supervision was necessary within the meaning of Article 6(5)(b) of Regulation No 1024/2013. He stated that that conclusion was not affected by the observations made by the applicant in the administrative procedure preceding the contested decision, since it had not provided any argument or information that had not already been taken into consideration by the ECB.

27 Finally, the Secretary of the Governing Council stated that an appeal could be brought before the Administrative Board of Review of the ECB and that legal proceedings could be brought before the Court of Justice of the European Union.

28 The contested decision took effect on 4 April 2019.

29 By letter of 18 April 2019, the ECB sent to the applicant, in response to a request which the applicant had made to the ECB on 27 November 2018, the list of documents held by the ECB relating to its prudential supervision. The ECB stated that the right of access to the administrative file did not extend to confidential information and that, consequently, the list included, for each document, a classification according to whether that document was accessible or confidential.

30 By application lodged at the Registry of the General Court on 14 May 2019, the applicant, CR and CT brought the present action.

III. Events subsequent to the bringing of the action

31 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.

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

33 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 all of the powers of the applicant and its board of directors to him. 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 was likely to fail, against the decision of the SRB 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.

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

35 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.

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

37 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.

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

39 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

40 On 31 July 2019, the ECB lodged its defence at the Court Registry.

41 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.

42 On 27 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.

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

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

45 The applicant claims that the Court should:

– annul the contested decision;

– order the ECB to pay the costs.

46 The ECB 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

47 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.

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

49 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]'.

50 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 activity on behalf of the applicant without prior consultation with the insolvency administrator.

51 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 27 April 2021, and subsequently on 28 June 2021

52 On 27 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).

53 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.

54 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).

55 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.

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

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

58 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 27 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.

59 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 33 above, that the applicant would be prevented from bringing a potential dispute with the insolvency administrator before the Latvian courts. Not only does that decision mention that the applicant's board of directors does have the option to submit a separate request to the insolvency administrator as regards the right of representation in specific 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.

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

C. Oral part of the procedure

61 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. …'

62 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.

63 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'.

64 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 provides 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.

65 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.

66 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'.

67 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.

68 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.

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

70 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.

71 Accordingly, given that the applicant did not submit any reasoning whatsoever in its request for a hearing and, moreover, although 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.

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

D. Substance

1. The first plea in law, alleging infringement of Article 6(5)(b) of Regulation No 1024/2013, in that that provision does not provide for a decision to classify the entity concerned as significant

73 The applicant submits that the contested decision, in so far as it classifies the applicant as a significant entity, is contrary to Article 6(5)(b) of Regulation No 1024/2013. That article provides not for a classification decision, but for a decision by the ECB to exercise directly all the relevant powers of a national competent authority with regard to one or more credit institutions if that is necessary to ensure a consistent application of high supervisory standards.

74 The applicant submits that the second sentence of Article 39(5) of Regulation No 468/2014 should not be interpreted in a manner incompatible with Article 6(5)(b) of Regulation No 1024/2013. In the alternative, it claims that the second sentence of Article 39(5) of Regulation No 468/2014 is unlawful if that article were to be interpreted as changing the nature of the decision based on Article 6(5)(b) of Regulation No 1024/2013.

75 The applicant states that a decision adopted under Article 6(5)(b) of Regulation No 1024/2013 is not a change in the status of a credit institution. It is an intervention by the ECB motivated by a concern about the quality of the supervision carried out by the national competent authority rather than by a concern about the level of compliance of the credit institution concerned. The latter should retain the right to the same treatment as less significant institutions and should not be subject to supervision which is appropriate only for ‘genuinely’ significant establishments. The applicant states that the harmonisation of supervision under the SSM is a gradual process and that there are still differences as regards banking supervision in the various Member States. It adds that Article 47(4) of Regulation No 468/2014, which governs the relevant *actus contrarius*, confirms that a reclassification decision is not necessary.

76 The ECB disputes that line of argument.

77 Article 39(5) of Regulation No 468/2014 provides: ‘The ECB shall also directly supervise a less

significant supervised entity or a less significant supervised group under an ECB decision adopted pursuant to Article 6(5)(b) of [Regulation No 1024/2013] to the effect that the ECB will exercise directly all relevant powers referred to in Article 6(4) of Regulation [No 1024/2013]. For the purposes of the SSM, such a less significant supervised entity or less significant supervised group shall be classified as significant'.

78 Furthermore, under Article 68(5) of Regulation No 468/2014, if the ECB decides that direct supervision by the ECB of the less significant supervised entity or less significant supervised group is necessary in order to ensure the consistent application of high supervisory standards, it shall adopt an ECB decision in accordance with Title 2 of Part IV of that regulation.

79 An 'ECB decision in accordance with Title 2 [of Part IV of Regulation No 468/2014]', as referred to in Article 68(5) of that regulation, is a decision to classify a supervised entity as significant, as indicated by the heading of Title 2, namely 'Procedure for classifying supervised entities as significant supervised entities'.

80 Consequently, it follows from the clear wording of Article 39(5) of Regulation No 468/2014, supported by the wording of Article 68(5) of that regulation, that, where the ECB decides to carry out direct prudential supervision of a less significant credit institution on the basis of Article 6(5)(b) of Regulation No 1024/2013, it must adopt a decision classifying that institution as significant.

81 The applicant submits, however, that the second sentence of Article 39(5) of Regulation No 468/2014 is contrary to Article 6(5)(b) of Regulation No 1024/2013, since it alters the nature of the decision provided for in the latter article.

82 However, although Article 6(5)(b) of Regulation No 1024/2013 does not state that, when the ECB decides to exercise itself all relevant powers with regard to a less significant credit institution, it is to adopt a decision classifying that institution as significant, it does not rule that out.

83 Similarly, whilst it is true that Article 47(4) of Regulation No 468/2014, which concerns the opposite situation, in which the ECB decides to end direct prudential supervision in the case of an entity subject to such supervision under an earlier ECB decision adopted pursuant to Article 6(5)(b) of Regulation No 1024/2013, does not state that, in such a situation, the ECB is to adopt a decision classifying the entity concerned as less significant, it does not exclude it either. In that regard, it should be noted that Article 47 also comes under Title 2 of Part IV of Regulation No 468/2014, entitled 'Procedure for classifying supervised entities as significant supervised entities', and that that article is entitled 'Reasons for ending direct supervision by the ECB', that is to say, that its purpose is, in principle, to set out those reasons, and not to specify whether a decision ending direct prudential supervision means that the ECB is to adopt a decision classifying the entity concerned as less significant.

84 Moreover, in so far as the second sentence of Article 39(5) of Regulation No 468/2014 provides for the classification of an entity as significant, it does not call into question the nature of the decision adopted on the basis of Article 6(5)(b) of Regulation No 1024/2013, which is a decision on the allocation of powers between the ECB and the national competent authorities in relation to prudential supervision.

85 The sole effect of the decision to classify an entity as significant is that the ECB takes over direct prudential supervision of that entity, in accordance with Article 6(5)(b) of Regulation No 1024/2013.

86 The classification of an entity as significant when the ECB decides to exercise direct prudential supervision of that entity pursuant to Article 6(5)(b) of Regulation No 1024/2013 is not contrary to the principle of equal treatment, as the applicant appears to claim.

87 In that regard, it should be noted that such a decision, which relates only to the determination of the competent authority, does not alter either the prudential rules applicable to that entity or the supervisory powers which the competent authority has in respect of that entity for the purposes of the supervisory tasks conferred on the ECB by the SSM.

88 Consequently, the second sentence of Article 39(5) of Regulation No 468/2014 is not contrary to Article 6(5)(b) of Regulation No 1024/2013.

89 It follows from the foregoing that the contested decision, in so far as it provides for the applicant to be classified as a significant entity, is not contrary to Article 6(5)(b) of Regulation No 1024/2013.

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

2. The fourth plea in law, alleging infringement of essential procedural requirements

91 It is appropriate, in the present case, to examine next the fourth plea in law, alleging infringement of essential procedural requirements, before the other pleas, relating to the merits of the contested decision.

92 In the fourth plea, the applicant submits that the contested decision is vitiated by several infringements of essential procedural requirements.

93 In the first place, the applicant submits that the report laid down in Article 68(3) of Regulation No 468/2014 was not drawn up.

94 The applicant submits that, in the arbitration proceedings, the Republic of Latvia admitted that there was no report, relying on the good working relationship between the FCMC and the ECB. That supposed good working relationship does not justify the failure to submit that report, given that the latter is an essential element of the procedure, is mandatory and it is intended to protect the applicant's interests in a transparent process subject to judicial review.

95 In addition, the applicant states that the dispute between the Republic of Latvia and the ECB as regards A suggests that the working relationship between the ECB and the FCMC was not without difficulties. A would have to be relieved of his duties if the accusations made against him were supported by evidence which, according to the Republic of Latvia, exists, but was not disclosed to the Court of Justice in Case C-238/18 between the Republic of Latvia and the ECB. The applicant is faced with unresolved corruption issues and a loss of confidence in the regulatory process which is due to a lack of cooperation between the ECB and the Latvian authorities, including the FCMC. Furthermore, the claim that there is a good working relationship between the ECB and the FCMC runs counter to a decision adopted on the basis of Article 6(5)(b) of Regulation No 1024/2013, in so far as such a decision presupposes a situation in which the ECB is not satisfied with the supervision carried out by the national competent authority and considers that general instructions and recommendations pursuant to Article 6(5)(a) of Regulation No 1024/2013 are not sufficient to remedy that situation.

96 In the second place, the applicant submits that the ECB did not disclose to it the FCMC's request of 21 December 2018. That request is a procedural step laid down in Article 68 of Regulation No 468/2014 and the contested decision is based on the content of that request. Consequently, the draft decision which was communicated to the applicant before the adoption of the contested decision was not complete, with the result that that decision was also communicated to it in an incomplete manner. The failure to disclose that request to the applicant and the latter not being allowed to submit its comments on the request infringes its rights of defence, right to be heard and right of access to the administrative file.

97 In the third place, the applicant submits that the ECB did not disclose to it the FCMC's first request 16 November 2017 for the ECB to take over direct prudential supervision of the applicant. The applicant learned of the existence of that request only by letter of 20 March 2019 from the Republic of Latvia's legal counsel in the context of the arbitration proceedings. The production of that request by that legal counsel confirms that it was a reaction to the initiation of the arbitration proceedings. The failure to disclose that request to the applicant infringes its rights of defence, right to be heard and right of access to the administrative file.

98 In the fourth place, the applicant submits that the ECB did not adopt a decision on that request of the FCMC of 16 November 2017, in breach of Article 68 of Regulation No 468/2014.

99 In the fifth place, the applicant claims that its right to be heard was not respected, since that right involved the possibility of making observations on the specific assertions made in support of the ground of the contested decision which stated that the applicant had not demonstrated sufficient willingness to cooperate following the initiation of the arbitration proceedings.

100 In the sixth and last place, the applicant maintains that the contested decision does not contain an adequate statement of reasons. That decision does not explain why the ECB considered it necessary to take over the direct supervision of the applicant.

101 The ECB disputes that line of argument.

102 It is appropriate to examine, first of all, the applicant's arguments in so far as it considers that the ECB failed to comply with its obligation to state reasons, then in so far as it claims that the ECB infringed its rights of defence, right to be heard and right to have access to the administrative file, next, in so far as it relies on an irregularity arising from the absence of the report laid down in Article 68(3) of Regulation No 468/2014, and lastly in so far as it claims that the ECB did not adopt a decision on the FCMC's request of 16 November 2017.

(a) The complaint alleging infringement of the obligation to state reasons

103 The statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review (see 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).

104 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).

105 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).

106 As regards the statement of reasons for a decision to classify a supervised entity on an individual basis as significant, Article 39(1) of Regulation No 468/2014 provides that 'a supervised entity shall be considered a significant supervised entity if the ECB so determines in an ECB decision addressed to the relevant supervised entity pursuant to Articles 43 to 49 [of this regulation], explaining the underlying reasons for such decision'.

107 Furthermore, Article 33 of Regulation No 468/2014, entitled 'Motivation of ECB supervisory decisions', provides, in paragraph 2, that the statement of reasons for an ECB supervisory decision is to contain the material facts and legal reasons on which that decision is based.

108 In the present case, contrary to what the applicant submits briefly in the context of the fourth plea, the contested decision, the grounds of which have been summarised in paragraphs 23 to 27 above, sets out the reasons why the ECB considered it necessary to take over the direct prudential supervision of the applicant. It refers clearly and unambiguously to the legal basis for the decision, the facts on which it is based, in particular the ICSID recommendation, and the ECB's assessment. It is apparent from that assessment that the ECB decided to take over the direct prudential supervision of the applicant on the ground that, according to the FCMC, since the initiation of the arbitration proceedings, the applicant's reaction to almost all the supervisory activities continued to demonstrate no willingness to implement successful cooperation and that the FCMC considered that it had no ability whatsoever to exercise high-level supervision with regard to the applicant in accordance with EU and SSM standards.

109 It should be added, for the sake of completeness, that the contested decision was adopted in a context known to the applicant. The latter was in regular contact with FCMC, which closely monitored the risks to which the applicant was exposed. The applicant was also in direct contact with the ECB, given that it had written to the ECB on 5 July and 12 September 2018 to request it to intervene in its prudential supervision and given that the Chair of the ECB's Supervisory Board 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. Finally, the applicant was aware of all the aspects of the arbitration proceedings, which it had itself brought.

110 The grounds of the contested decision were therefore sufficient to enable the applicant to ascertain the reasons for that decision for the purposes of assessing its validity, and to enable the Court to exercise its power of review.

111 Consequently, the applicant is not entitled to claim that the ECB infringed the obligation to state reasons laid down, inter alia, in Article 296 TFEU and Regulation No 468/2014.

(b) The complaints alleging infringement of the rights of the defence, the right to be heard and the right of access to the administrative file

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

113 In particular, the right to be heard, which is an integral part of the general principle of respect for the rights of defence, guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely (see judgment of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 87 and the case-law cited).

114 Under Article 44(1) of Regulation No 468/2014, when taking decisions on the classification of a supervised entity or a supervised group as significant under Title 2 of Part IV of that regulation, and unless otherwise provided, the ECB is to apply the procedural rules of Title 2 of Part III of that regulation. Under paragraph 4 of that article, the ECB is to give each relevant supervised entity the opportunity to make submissions in writing prior to the adoption of an ECB decision pursuant to paragraph 1.

115 Under Article 31(1) of Regulation No 468/2014, before the ECB may adopt a supervisory decision addressed to a party which would adversely affect the rights of such party, the party must be given the opportunity of commenting in writing to the ECB on the facts, objections and legal grounds relevant to the ECB supervisory decision; if the ECB deems it appropriate, it may give the parties the opportunity to comment on the facts, objections and legal grounds relevant to the ECB supervisory decision in a meeting; the notification by which the ECB gives the party the opportunity to provide its comments is to mention the material content of the intended supervisory decision and the material facts, objections and legal grounds on which the ECB intends to base its decision.

116 Article 32 of Regulation No 468/2014, entitled ‘Access to files in an ECB supervisory procedure’, provides, in paragraph 1, that the rights of defence of the parties concerned are to be fully respected in ECB supervisory procedures; for this purpose, and after the opening of the ECB supervisory procedure, the parties are entitled to have access to the ECB’s file, subject to the legitimate interest of legal and natural persons other than the relevant party, in the protection of their business secrets; the right of access to the file does not extend to confidential information; the national competent authorities are to forward to the ECB, without undue delay, any request received by them related to the access to files connected with ECB supervisory procedures.

117 As a preliminary point, given that the applicant has put forward arguments based on a breach of the principle of respect for the rights of the defence, the right to be heard and the right of access to the administrative file, it is necessary to rule on those arguments, without it being necessary to examine whether those rights are, as such, essential procedural requirements within the meaning of Article 263 TFEU.

118 In the present case, the ECB submitted to the applicant a draft decision for its comments.

119 It may be noted at the outset that the applicant does not claim that the contested decision is based on matters of fact and of law which were not mentioned in the draft decision communicated to it.

120 Next, in so far as the applicant claims that the ECB did not notify it of the FCMC’s request of 21 December 2018 that the ECB carry out direct prudential supervision of the applicant, it should be noted that that request was the first step in the administrative procedure, but that it was a separate act from the contested decision and did not bind the ECB, since the latter could decide to take over the direct prudential supervision of the applicant for reasons other than those set out in that request, or even on its own initiative.

121 Furthermore, no provision of Regulation No 468/2014 provides that the ECB is to forward of its own motion such a request from the national competent authority to the less significant entity referred to in that request. That request is part of the administrative file and the applicant could have had access to it, in accordance with Article 32 of that regulation, while respecting the legitimate interests of confidentiality and of professional and business secrecy, if it had made a request for access to the file.

122 Furthermore, even though the ECB relied, in the contested decision, on certain considerations contained in the FCMC’s request of 21 December 2018, it did state in sufficient detail, in the draft decision which it sent to the applicant and in the contested decision itself, those considerations, and

therefore there is no need to refer to the FCMC's request of 21 December 2018 in order to ascertain the reasons for the contested decision.

123 In so far as the applicant claims that the ECB did not notify it of the FCMC's request of 16 November 2017, by which the FCMC had previously requested the ECB to take over the direct prudential supervision of the applicant, it should be noted that that request was not one of the stages of the administrative procedure which led to the contested decision and that the grounds on which the contested decision is based are not set out in that previous request. That complaint is therefore ineffective in support of the claims directed against the contested decision.

124 Lastly, in so far as the applicant submits that it was not given an opportunity to submit observations on the specific assertions made in support of the ground of the contested decision according to which, in the FCMC's view, the applicant had not demonstrated sufficient willingness to cooperate following the initiation of the arbitration proceedings, it should be noted that the applicant was given an opportunity to submit observations on that ground, which was set out in the draft decision sent to it and was not accompanied by other assertions.

125 Thus, the ECB, by communicating to the applicant the draft decision without sending to the applicant, of its own motion, other documents or material, such as the FCMC's request of 21 December 2018, in the present case gave the applicant the opportunity properly to state its point of view during the administrative procedure.

126 As regards the right of an party concerned to have access to files in the context of a supervisory procedure, Article 32 of Regulation No 468/2014, the provisions of which have been set out in paragraph 116 above, provides that the national competent authorities are to forward to the ECB, without undue delay, any request received by them related to the access to files. It follows from that provision that access to the file requires the submission of a request by the party concerned.

127 In that regard, it follows from the case-law that, when sufficiently precise information has been disclosed, enabling the entity concerned properly to state its point of view on the planned measure, the principle of respect for the rights of the defence does not mean that that the ECB is obliged spontaneously to grant access to all the documents in its file. It is only on the request of the entity concerned that the ECB is required to provide access to all non-confidential official documents concerning the measure at issue (see, to that effect and by analogy, judgment of 31 January 2019, *Islamic Republic of Iran Shipping Lines and Others* v *Council*, C-225/17 P, EU:C:2019:82, paragraph 89 and the case-law cited).

128 In the present case, first, as stated in paragraph 125 above, the applicant received sufficient information in order properly to state its point of view during the administrative procedure. Second, it has not been established, or even claimed, that the applicant requested the disclosure of the FCMC's requests of 16 November 2017 and 21 December 2018 or, in any event, that the ECB wrongly refused it access to those documents. Consequently, the applicant is not entitled to claim that its right of access to the file concerning it was infringed.

129 For the sake of completeness, 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).

130 In the present case, it is not apparent from the documents in the case file that, if the applicant had been notified of the FCMC's requests of 16 November 2017 and 21 December 2018, the outcome of the

procedure might have been different. Moreover, the applicant does not allege that.

131 Consequently, the applicant is not entitled to claim that the ECB infringed the principle of respect for the rights of the defence, its right to be heard and its right of access to the administrative file.

(c) The complaint alleging infringement of Article 68(3) of Regulation No 468/2014 in the absence of the report stipulated in that provision

132 According to Article 68(3) of Regulation No 468/2014, the request of the national competent authority that the ECB carry out direct prudential supervision in respect of a less significant supervised entity or a less significant supervised group is to be accompanied by a report indicating the supervisory history and risk profile of that entity or that group.

133 In the present case, it is common ground that the FCMC's request of 21 December 2018 was not accompanied by the report referred to in Article 68(3) of Regulation No 468/2014 indicating the applicant's supervisory history and risk profile.

134 The report stipulated in Article 68(3) of Regulation No 468/2014 enables the ECB, as it maintains, to assess the request for the taking-over of prudential supervision submitted by the national competent authority and helps to ensure, if the ECB grants that request, a harmonious transfer of the competences associated with that supervision.

135 The role of that relationship in the cooperation between the ECB and the national competent authority for the purposes of ensuring the smooth transmission of supervisory competences is, moreover, referred to in Article 43(6) of Regulation No 468/2014.

136 Thus, the purpose of the report stipulated in Article 68(3) of Regulation No 468/2014, even if it is compulsory, is, inter alia, to ensure the proper transmission of information between the national competent authority and the ECB and is not, as the ECB rightly states, a procedural guarantee intended to protect the interests of the credit institution concerned or, a fortiori, an essential procedural requirement within the meaning of Article 263 TFEU.

137 That finding is supported by the fact that, when the ECB decides to carry out of its own motion direct prudential supervision of a less significant entity, the request for the production of such a report by the national competent authority is merely an option available to the ECB, in accordance with Article 69(1) of Regulation No 468/2014.

138 In addition, in the present case, it is apparent from the FCMC's request of 21 December 2018 that the FCMC referred, in that request, to information relating to the applicant's supervisory history and referred to other identified information that was already in the ECB's possession, in particular information exchanged within the crisis management group established in September 2017, within which the ECB and the FCMC regularly exchanged their views on the applicant's prudential situation and any prudential measures to be adopted.

139 In those circumstances, even though the FCMC's request of 21 December 2018 was not formally accompanied by the report stipulated in Article 68(3) of Regulation No 468/2014, it must be regarded as containing the information that must be included in that report or, at the very least, as referring to that information already in the ECB's possession.

140 As regards the applicant's arguments seeking to call into question the argument put forward by the Republic of Latvia in the context of the arbitration proceedings that there was a good working relationship between the ECB and the FCMC, it must be held that that line of argument is not capable of establishing that the ECB was not in possession of all the relevant information that must be included

in the report stipulated in Article 68(3) of Regulation No 468/2014 before it took a decision on the FCMC's request that the ECB carry out direct prudential supervision of the applicant.

141 Consequently, the absence of the report stipulated in Article 68(3) of Regulation No 468/2014 could not, in the present case, render the contested decision unlawful.

142 Furthermore, even if the absence of the report constitutes a procedural irregularity, that irregularity can entail the annulment of the contested decision in whole or in part only if it is shown that, in the absence of such irregularity, that decision might have been substantively different (see, to that effect, judgment of 11 November 2021, *Autostrada Wielkopolska* v *Commission and Poland*, C-933/19 P, EU:C:2021:905, paragraph 67 and the case-law cited).

143 In the present case, it is not apparent from the documents in the case file that, if a report as stipulated in Article 68(3) of Regulation No 468/2014 had been drawn up, the contested decision might have been substantively different. In that regard, the Court notes that the applicant does not allege this.

144 Consequently, the applicant's complaint regarding the absence of the report stipulated in Article 68(3) of Regulation No 468/2014 must be rejected as unfounded.

(d) The complaint alleging the absence of a decision by the ECB on the FCMC's request of 16 November 2017

145 As regards the applicant's complaint that the ECB did not adopt a decision on the FCMC's request of 16 November 2017, by which the latter had previously requested the ECB to carry out prudential supervision of the applicant, suffice it to note that the fact that the ECB did not take a decision on that previous request is not capable of leading to the annulment of the contested decision, which concerns a different procedure initiated by FCMC's request of 21 December 2018.

146 Consequently, that complaint, which, moreover, does not concern an essential procedural requirement within the meaning of Article 263 TFEU, must be rejected as ineffective.

147 In addition, that complaint must be regarded as having no factual basis, given that, first, the ECB states, without being challenged, that it refused the FCMC's request of 16 November 2017 at the Supervisory Board meeting of 28 November 2017 and, second, in accordance with Article 68(5) of Regulation No 468/2014, it is in the event that the ECB decides to exercise direct supervision of a less significant entity that it adopts a decision in accordance with Title 2 of Part IV of that regulation, that is to say, a classification decision notified to the entity concerned, and not when it decides not to grant the request by the national competent authority.

148 Accordingly, the fourth plea in law must be rejected.

3. The second plea in law, alleging a misinterpretation of Article 6(5)(b) of Regulation No 1024/2013 as regards the conditions and purpose of that provision

149 The applicant submits that the contested decision is based on a misinterpretation of Article 6(5)(b) of Regulation No 1024/2013 as regards three aspects, relating to the conditions for application and the purpose of that article.

150 In the first place, the applicant submits that the ECB failed to take into account the fact that a decision adopted under Article 6(5)(b) of Regulation No 1024/2013 is intended to remedy problems regarding the quality of the supervision, carried out in the present case by the FCMC, and not to remedy failures by the institution concerned to comply with the rules. The ECB wrongly interpreted the reference to 'high supervisory standards' in that provision as a reference to 'high standards of compliance'. That

misinterpretation is similar to the incorrect reclassification of the nature of the contested decision alleged in the first plea. The ECB's practice confirms that that there is a misinterpretation, given that, to date, Article 6(5)(b) of Regulation No 1024/2013 has been used only in one case, which was not based on alleged failings on the part of the relevant credit institution. The ECB has not taken over prudential supervision even in cases where the credit institution's failures were so significant that a decision to withdraw authorisation was taken.

151 In the second place, the applicant states that the ECB failed to take account of the fact that Article 6(5)(b) of Regulation No 1024/2013 refers specifically to the 'consistent' application of high supervisory standards. The only previous decision to apply that provision illustrates that objective, since that decision was intended to ensure consistent supervision of a group of supervised entities in several Member States. That aspect of consistency of supervision was not addressed in the contested decision.

152 In the third and last place, the applicant states that the contested decision does not acknowledge the exceptional nature of a decision adopted under Article 6(5)(b) of Regulation No 1024/2013. The ECB wrongly assumed that the taking-over of direct prudential supervision of the applicant was a routine decision for the ECB.

153 The ECB contends that it did make the errors of law alleged against it by the applicant.

154 By its second plea, the applicant submits that the ECB infringed Article 6(5)(b) of Regulation No 1024/2013 in three respects, which it is appropriate to examine in turn.

155 As follows from the very wording of Article 6(5)(b) of Regulation No 1024/2013, the objective of that provision is to ensure the consistent application of high supervisory standards.

156 As follows from Article 67(2) of Regulation No 468/2014, multiple factors may justify the adoption of a decision based on Article 6(5)(b) of Regulation No 1024/2013.

157 In the first place, the applicant submits that the ECB wrongly interpreted Article 6(5)(b) of Regulation No 1024/2013 as being intended to address problems of non-compliance by the entity concerned with prudential legislation rather than to address problems regarding the quality of prudential supervision carried out by the national competent authority.

158 However, it should be noted that the ECB did not adopt the contested decision on the ground that the applicant did not comply with prudential legislation. Moreover, the applicant does not refer to any ground of the decision in support of its line of argument.

159 In particular, the ECB noted, in the contested decision, that the FCMC had stated in its request that the ECB carry out direct prudential supervision of the applicant that, since the initiation of the arbitration proceedings, the applicant's reaction to almost all the supervisory activities continued to demonstrate no willingness to implement successful cooperation and that the FCMC considered itself to have no ability whatsoever to exercise high-level supervision of the applicant.

160 It was, therefore, for reasons based on the fact that the FCMC had no ability to carry out high-level supervision of the applicant, a finding that the applicant does not, moreover, call into question, that the ECB adopted the contested decision.

161 Consequently, the ECB did not make the error of law alleged against it by the applicant.

162 In the second place, the applicant submits that the ECB failed to take account of the fact that Article 6(5)(b) of Regulation No 1024/2013 refers specifically to the 'consistent' application of high

supervisory standards.

163 However, again, the applicant does not mention any paragraph of the contested decision in support of its line of argument. Moreover, it is expressly stated in paragraph 2.1 of that decision that, according to the ECB, it was necessary for it to take over direct prudential supervision of the applicant in order to ensure the 'consistent' application of high supervisory standards, in accordance with the objective laid down in Article 6(5)(b) of Regulation No 1024/2013.

164 The applicant's second complaint must therefore be rejected.

165 In the third place, the applicant submits that the contested decision does not acknowledge the exceptional nature of a decision adopted under Article 6(5)(b) of Regulation No 1024/2013.

166 In that regard, it should be noted that it is not apparent either from the wording of Article 6(5)(b) of Regulation No 1024/2013, or indeed from the provisions of Regulation No 468/2014, that the ECB's decision to exercise directly itself all relevant powers with regard to one or more less significant credit institutions must be exceptional in nature.

167 The applicant submits that the Chair of the ECB's Supervisory Board stated, in a letter of 23 April 2018 addressed to a Member of the European Parliament who had asked her how often the competence provided for in Article 6(5)(b) of Regulation No 1024/2013 had been implemented, that that competence was exceptional.

168 However, the letter referred to in paragraph 167 above cannot add a criterion to Article 6(5)(b) of Regulation No 1024/2013, which does not make the exercise of the related competence subject to there being exceptional circumstances.

169 Moreover, in view of the ICSID recommendation, the applicant was clearly in a rare situation in terms of the prudential supervision of credit institutions.

170 Consequently, by not referring to the existence of exceptional circumstances in the contested decision, the ECB did not infringe Article 6(5)(b) of Regulation No 1024/2013.

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

4. The third plea in law, alleging a failure to fulfil the obligation to analyse and appraise carefully and impartially all the aspects of the case in order to establish the need for a decision under Article 6(5)(b) of Regulation No 1024/2013

172 The applicant submits that the ECB did not carry out an impartial analysis of the facts. The ECB relied on vague complaints concerning the applicant's conduct following the initiation of the arbitration proceedings rather than on a specific case of non-cooperation. It did not address the question of whether the complaints put forward by the FCMC against the applicant were well founded. That approach is unacceptable because of the unusual nature of the contested decision which should be justified by unusual circumstances. In addition, the ECB relied excessively on the FCMC's assessments, without expressing its own point of view, which is paradoxical for a decision of this nature. Such a decision presupposes that the ECB can no longer rely solely on the supervision carried out by the national competent authority.

173 The ECB disputes that line of argument.

174 In support of its third plea, the applicant submits, in essence, that, in order to adopt the contested decision, the ECB relied on vague complaints made by the FCMC concerning the applicant's conduct

following the initiation of the arbitration proceedings, rather than referring to a specific case of non-cooperation, and did not express its own point of view on the FCMC's assessments.

175 However, the ECB did not err in law by not examining whether or not the FCMC's finding that the applicant's conduct had demonstrated no willingness to cooperate successfully was well founded.

176 Given that the purpose of a decision adopted on the basis of Article 6(5)(b) of Regulation No 1024/2013 is to ensure a consistent application of high supervisory standards, and not to remedy a supervised entity's alleged failure to comply with prudential rules, the ECB may decide to carry out direct prudential supervision of a less significant institution without relying on such a failure to comply.

177 In the present case, following the bringing of the arbitration proceedings and the interim measures adopted by ICSID, the FCMC considered that the applicant had not demonstrated a willingness to cooperate successfully. It also took the view that it had no ability whatsoever to exercise high-level supervision of the applicant in accordance with EU and SSM standards.

178 In that regard, it should be noted that the FCMC's assessment as regards its total inability to carry out high-level supervision, which is duly supported by the ICSID recommendation and has not been disputed in any way by the applicant in the administrative proceedings or before the Court, was, in itself, such as to give rise to serious doubts as to the FCMC's ability to ensure compliance with high supervisory standards with regard to the applicant and to justify the need for the ECB to take over the prudential supervision.

179 Consequently, the ECB was entitled to decide to carry out direct prudential supervision of the applicant, with the aim of ensuring a consistent application of high supervisory standards, without examining whether the FCMC's allegation that the applicant was unwilling to cooperate successfully was established; nor, a fortiori, was it required to rely on a specific case of non-cooperation.

180 In addition, although the ECB did indeed take the utmost account of the FCMC's assessments with regard to the prudential supervision of the applicant, it did not consider itself bound by those assessments, but made its own assessment of the need to carry out direct prudential supervision of the applicant, as is expressly stated in paragraphs 2.1 and 2.5 of the contested decision, in which the ECB clearly concluded that there was such a need.

181 In particular, the fact that the ECB also failed to state reasons in the contested decision as regards whether the FCMC had no ability whatsoever to carry out high-level supervision of the applicant does not support the conclusion that it did not assess carefully and impartially all the aspects of the case, given that the applicant did not challenge the FCMC's assessment on that point.

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

5. The fifth plea in law, alleging infringement of Article 6(5)(b) of Regulation No 1024/2013 in that the ECB did not exercise its discretion in accordance with that provision

183 The applicant submits that the ECB did not take into consideration, in the contested decision, the discretionary nature of its powers in the matter (relying, in that regard, on the use of the word 'may' in Article 6(5)(b) of Regulation No 1024/2013). The ECB cannot claim that it exercised its discretion if that does not appear in the contested decision and if, on the contrary, that decision is based on the principle that its adoption is a necessary consequence of the fact that the conditions laid down in Article 6(5)(b) of Regulation No 1024/2013 are met.

184 The ECB disputes that line of argument.

185 As the parties agree, the ECB has a broad discretion when adopting, 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).

186 That conclusion is confirmed by the very wording of Article 6(5)(b) of Regulation No 1024/2013 (see, to that effect, judgment of 16 May 2017, *Landeskreditbank Baden-Württemberg* v *ECB*, T-122/15, EU:T:2017:337, paragraph 61).

187 However, where the administration has a broad discretion in adopting a decision, neither the obligation to state reasons required by Article 296 TFEU nor any other rule obliges it to refer to that discretion in the decision at issue.

188 In the present case, it is not apparent from any document in the case file that the ECB wrongly believed that it did not have such discretion.

189 In particular, the mere fact that it is concluded, in paragraph 2.5 of the contested decision, that the conditions for the ECB's taking-over of direct supervision of the applicant were satisfied does not mean that the ECB wrongly considered itself to be in a situation of circumscribed powers and that it did not exercise its broad discretion to reach that conclusion or that it erred in law in the application of Article 6(5)(b) of Regulation No 1024/2013.

190 The fifth plea in law must therefore be rejected as unfounded.

6. The sixth plea in law, alleging infringement of the principle of proportionality

191 The applicant submits that the contested decision infringes the principle of proportionality. The ECB cannot claim that it carried out a proportionality analysis if that does not appear in the contested decision and if, on the contrary, that decision suggests the opposite, that is to say, that it is based on the principle that fulfilment of the conditions laid down in Article 6(5)(b) of Regulation No 1024/2013 is sufficient.

192 The applicant states that it is not acknowledged in the contested decision that a decision of that nature must be reserved for cases in which direct supervision by the ECB is an appropriate response to a specific regulatory problem and is capable of achieving a specific prudential objective, when no alternative and less intrusive solutions are conceivable and where the burden imposed on the institution concerned is appropriate in the light of the underlying problem and the objective pursued. The contested decision does not specifically describe the underlying problem. The reason why direct supervision by the ECB is an appropriate means of addressing the problem is also unclear. Moreover, the ECB did not analyse the other possible measures, in particular an effort on its part to restore confidence in regulatory supervision by examining the corruption issues.

193 The applicant states that the importance of the principle of proportionality was emphasised by the Chair of the Supervisory Board in a letter to the European Parliament of 23 April 2018. As stated in connection with the first and second pleas in law, given that the ECB did not take into account the fact that a decision to carry out direct prudential supervision is primarily intended to resolve problems relating to supervision (rather than non-compliance on the part of the credit institution concerned), it did not consider alternative methods which would allow more appropriate supervision by the national competent authority, for example the provision of appropriate advice. In accordance with Article 6(5)(b) of Regulation No 1024/2013, a consistently high level of supervision should be ensured in the first place by regulations, guidelines or general instructions given to the national competent authorities. The ECB should assess to what extent the consistent application of high supervisory standards can be ensured by means of appropriate general instructions.

194 The ECB contends that it did not infringe the principle of proportionality.

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

196 The assessment of the proportionality of a measure must be reconciled with compliance with the discretion that may have been conferred on the EU institutions at the time it was adopted (see judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 53 and the case-law cited).

197 In the present case, the contested decision was appropriate for attaining the objective of ensuring a consistent application of high supervisory standards.

198 The contested decision was capable of addressing the FCMC's prudential concerns, by ensuring that the applicant would from then onwards be directly supervised by an authority which was in a position to use all of its supervisory powers.

199 In that regard, it should be noted that, as the ECB submits, the latter was, in view of the ICSID recommendation, better placed than the FCMC to ensure direct prudential supervision of the applicant.

200 Furthermore, the alternative measures suggested by the applicant, namely, first, that the ECB examine the corruption issues and, second, that the ECB provides advice or issue regulations, guidelines or general instructions to the FCMC, were not appropriate less onerous measures in the light of the objective pursued.

201 The ECB is fully entitled to claim that it is not competent itself to conduct an investigation into acts of corruption and that it cooperates in that regard with the national competent authorities. Similarly, the ECB is not competent to issue individual guidelines to a national competent authority (see, to that effect, judgment of 16 May 2017, *Landeskreditbank Baden-Württemberg* v *ECB*, T-122/15, EU:T:2017:337, paragraph 61).

202 In any event, the alternative measures suggested by the applicant would not have addressed the FCMC's concerns which justified the contested decision. Given that the direct prudential supervision of the applicant would have remained within the competence of the FCMC, the latter would always have considered itself unable to exercise the same supervisory powers as those conferred on all the other supervisory authorities within the SSM.

203 Moreover, it is not apparent from the documents in the case file that the contested decision caused problems for the applicant, therefore the alternative measures suggested by it cannot be regarded as less onerous than the measure implemented by the contested decision.

204 The contested decision, which merely alters the respective powers of the ECB and the FCMC, did not alter either the applicable prudential rules or the supervisory powers enjoyed by the competent authority vis-à-vis the applicant for the purposes of the supervisory tasks conferred on the ECB by the SSM.

205 Lastly, the applicant's assertion regarding a 'burden imposed on the relevant institution' is neither substantiated nor established.

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

7. The seventh plea in law, alleging infringement of the adage nemo auditur propriam turpitudinem allegans

207 The applicant submits that the contested decision infringes the adage *nemo auditur propriam turpitudinem allegans*, since neither the FCMC nor the ECB took account of their own responsibility for the loss of credibility in the supervisory process, which is the result of their refusal or inability to deal with the corruption issues effectively, as is shown by the dispute between the Republic of Latvia and the ECB before the Court of Justice.

208 The ECB disputes that line of argument.

209 According to the adage *nemo auditur propriam turpitudinem allegans*, no one may take advantage of their own misconduct.

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

211 The applicant does not indicate which specific act it criticises the ECB for, referring to the refusal or inability of the ECB and the FCMC to deal with the corruption issues effectively. Moreover, as regards the nature of the acts of corruption at issue, it should be noted that, first, the criminal investigation which gave rise to A being charged concerns not the applicant, but a third-party Latvian bank, and, second, as regards the acts of corruption complained of by CR, the applicant states that the Latvian authorities did not properly investigate and failed to bring to justice A and his associates.

212 If the applicant considers that the ECB was under an obligation to conduct an investigation into the acts of corruption complained of by CR, which is not apparent from the applicant's line of argument developed in support of the present plea, 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.

213 Furthermore, even if the ECB made an error by not conducting an investigation into the acts of corruption complained of by CR, it has not been demonstrated that that error was such as to render the contested decision unlawful; that decision is based not on the FCMC's systemic inability to carry out its tasks, but on its inability to carry out high-level prudential supervision of the applicant on account of the ICSID recommendation.

214 The fact that the ECB brought legal proceedings against the decision of 19 February 2018 by which the KNAB had provisionally prohibited A from performing his duties as Governor of the Central Bank of Latvia (Case C-238/18), relied on by the applicant, cannot be a factor capable of demonstrating that the ECB made an error.

215 Furthermore, the applicant does not specify how the ECB should be regarded as seeking to rely on its own wrongful conduct in the present case.

216 Consequently, infringement of the adage *nemo auditur propriam turpitudinem allegans* has not been established.

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

8. The eighth plea in law, alleging infringement of the principle of equal treatment

218 The applicant submits that the contested decision infringes the principle of equal treatment. That decision treats the applicant differently to other less significant credit institutions. Although serious doubts as to the supervision by the FCMC were raised, the reason why the applicant was the only one to receive special treatment from the FCMC and the ECB is unclear. The fact that the applicant and its shareholders refused a cooperation based on corrupt practices is not a legitimate ground for imposing special burdens on the applicant. The applicant refers to cases in which the ECB did not take over direct supervision even though the authorisation of the banks concerned had to be withdrawn and even though the ECB had listed specific instances of non-cooperation in its decision to withdraw authorisation.

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

220 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).

221 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).

222 It should be noted that, although the applicant alleges an infringement of the principle of equal treatment when compared with other less significant credit institutions which were not the subject of a decision by the ECB to take over direct prudential supervision, it has not been established that those institutions were in a situation that was comparable to that of the applicant.

223 In that regard, in so far as the applicant claims that the ECB did not take over the direct prudential supervision of credit institutions whose authorisation had to be withdrawn in view of specific instances of non-cooperation, it should be noted that the situation of those institutions is not comparable to that of the applicant, since they had not been the subject of a measure such as the ICSID recommendation.

224 Furthermore, by ensuring that the applicant is now directly supervised, as with all other supervised credit institutions under the SSM, by a supervisory authority which is able to use all its supervisory powers, the contested decision helps to ensure the application of the principle of equal treatment.

225 In addition, in view of what has been stated in paragraphs 204 and 205 above, it has not been demonstrated that credit institutions subject to direct prudential supervision by the ECB are treated differently to institutions subject to direct supervision by the FCMC or, a fortiori, that they have a particular burden imposed on them.

226 The eighth plea in law must therefore be rejected as unfounded.

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

227 The applicant submits that the contested decision infringes the principles of protection of legitimate expectations and legal certainty.

228 In the first place, the applicant submits that the contested decision is unclear and creates unjustified uncertainty. A decision to take over direct prudential supervision should indicate how prudential requirements will change and for how long the ECB will be the main supervisory authority. However, the contested decision does not contain any indication of those issues because it does not identify any specific problem that it must deal with. It vaguely suggests that the applicant should be penalised

because the FCMC considers that the applicant has not demonstrated its willingness to cooperate following the initiation of the arbitration proceedings. A literal reading of the contested decision suggests that direct supervision by the ECB will come to an end when the ECB is convinced that the applicant has demonstrated its willingness to cooperate. What is specifically required for that purpose is not clear, since the contested decision does not indicate a single example of the applicant's non-cooperation with the FCMC. That could mean that the arbitration proceedings would have to be interrupted in order for the applicant to be released from direct supervision by the ECB and that the applicant would have to refrain from using any other legal remedy, which would constitute an unlawful objective.

229 Furthermore, the applicant submits that, given that the contested decision does not describe the underlying problem which it must address, it is impossible to predict what substantive changes there will be to supervisory requirements as a result of the ECB's intervention. The applicant's initial experience with the ECB, in particular at the time of the on-site inspection decided upon by the ECB, suggests that the latter adopts a new approach and does not consider itself bound by an earlier assessment of the FCMC, such as that relating to valuation of assets. That creates excessive legal uncertainty for the applicant which is not justified by any legitimate prudential objective.

230 In the second place, the applicant submits that the contested decision is contrary to the protection of legitimate expectations based on its previous interactions with the FCMC and the ECB. Although the principle of the protection of legitimate expectations is of crucial importance in the context of banking supervision, none of the interactions between the applicant and the FCMC or the ECB suggested that a decision based on Article 6(5)(b) of Regulation No 1024/2013 might be adopted. The interim agreement reached in the arbitration proceedings suggests the opposite, as does the fact that the ECB did not provide a substantive response to the applicant's numerous attempts to enter into constructive dialogue with it.

231 The ECB submits that it did not infringe the principles of protection of legitimate expectations and legal certainty.

232 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).

233 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).

234 In the first place, it should be noted that the contested decision is unambiguous.

235 In particular, contrary to what the applicant submits, a decision adopted pursuant to Article 6(5)(b) of Regulation No 1024/2013 does not have to state how prudential requirements will change, given that that decision precisely does not, in itself, have any effect on the applicable prudential rules. In that regard, the applicant's argument that its experience with the ECB, in particular at the time of the on-site inspection decided upon by the latter, 'suggests' that the ECB adopts a new approach is irrelevant, given that it is unconnected to the clarity of the contested decision itself. Moreover, that argument is

unfounded in the absence of evidence capable of demonstrating that the alleged new approach is real.

236 Nor must a decision adopted pursuant to Article 6(5)(b) of Regulation No 1024/2013 indicate for how long the ECB will be responsible for direct prudential supervision of the entity concerned, given that, in accordance with Article 47(4) of Regulation No 468/2014, the ECB is to adopt a decision ending direct supervision by it if, in its reasonable discretion, direct supervision is no longer necessary to ensure consistent application of high supervisory standards.

237 In the second place, and in any event, it is apparent from the documents in the case file that the applicant did not receive precise assurances that the ECB would not take over its direct prudential supervision.

238 In that regard, the applicant refers to the ICSID recommendation, but does not explain how those measures, which do not emanate from the ECB, could have constituted such precise assurances.

239 As regards the applicant's exchanges with the ECB, it should be noted that not only did the ECB not undertake, in those exchanges, not to adopt a decision on the basis of Article 6(5)(b) of Regulation No 1024/2013, but the applicant itself requested, by letter of 5 July 2018, that the ECB intervene in its prudential supervision.

240 Consequently, the applicant is not entitled to submit that the ECB infringed the principles of legal certainty and the protection of legitimate expectations.

241 The ninth plea in law must therefore be rejected as unfounded.

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

242 The applicant submits that the ECB infringed Article 19 and recital 75 of Regulation No 1024/2013, which require the ECB to fulfil its obligations free from any political influence, a requirement which the ECB disregarded by adopting a decision which constitutes, above all, a response to the initiation of the arbitration proceedings. The latter is a legitimate use of a legal remedy and a form of constructive dispute resolution rather than an act of hostility. In addition, the contested decision is motivated by a desire to undermine the effectiveness of the arbitration proceedings and, in particular, the interim agreement reached in those proceedings. This is confirmed by the existence of an earlier undisclosed request by the FCMC that the ECB take over the applicant's supervision. Since arbitration is a form of dispute resolution and, consequently, a form of cooperation, it is the FCMC, and not the applicant, which refuses to cooperate.

243 The ECB disputes that line of argument.

244 According to 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 Union as a whole and are neither to seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body.

245 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.

246 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).

247 In the present case, it is not apparent from the documents in the case file that the contested decision was adopted for purposes other than the objective of ensuring the consistent application of high supervisory standards with regard to the applicant, in accordance with Article 6(5)(b) of Regulation No 1024/2013.

248 In particular, although the contested decision takes account of the ICSID recommendation, it is not apparent from the documents in the case file that the purpose of that decision is to prevent the applicant from conducting arbitration proceedings against the Republic of Latvia.

249 Moreover, the applicant does not claim that the ICSID recommendation must be interpreted as having the effect of limiting the ECB's exercise of its prudential supervisory powers with regard to the applicant or of exempting the applicant from prudential supervision by an authority other than the FCMC having all its supervisory powers. As already noted, the applicant had itself requested the ECB to intervene in its prudential supervision by letter of 5 July 2018.

250 As regards the FCMC's first request that the ECB take over the direct prudential supervision of the applicant, of 16 November 2017, although the ECB does not dispute that the applicant was not informed of that request when it was made to the ECB, that fact is not, by itself, capable of demonstrating that the contested decision pursued an objective other than a prudential objective. As noted in paragraph 121 above, no provision of Regulation No 468/2014 provides that a request of that nature is to be communicated automatically to the entity concerned. In addition, that request is included in the case file and the applicant was given an opportunity to submit any observations on that request.

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

252 It follows from all of the foregoing that the action must be dismissed as unfounded.

VI. Costs

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

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

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

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.