Action brought on 25 November 2024 – Banco Santander v ECB

(Case T-610/24)

(C/2025/582)

Language of the case: Spanish

Parties

Applicant: Banco Santander, SA (Santander, Spain) (represented by: J. Rodríguez Cárcamo, G. García Vega and G. Fernández-Bravo Bernaldo de Quirós, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

— annul the supervisory decision of 16 October 2024 of the European Central Bank regarding the correct prudential treatment of Deferred Tax Assets (DTAs) originating in Banco Santander (Brasil), SA and incorporated into Banco Santander, SA on a consolidated basis;

— order the European Central Bank to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of Articles 36, 38 and 48 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([1]) ('the CRR'), since, in accordance with the contested decision, Banco Santander, SA must (i) deduct from its Common Equity Tier 1 (CET 1), in accordance with Article 36 of the CRR, DTAs originated by its Brazilian subsidiary, both before and after 23 November 2016, (ii) determine the amount of those DTAs in accordance with Article 38 of the CRR, and (iii) as regards the amounts exempt from deduction, under Article 48(4) of the CRR, apply a risk weighting of 250 % to them, despite the fact that those DTAs do not rely on future profitability.

2. Second plea in law, alleging misinterpretation of Article 39(2) of the CRR as regards the DTAs originated by the Brazilian subsidiary before 23 November 2016 (i) because, in accordance with point (a) of the first subparagraph of Article 39(2), those assets are automatically and mandatorily replaced without delay with a tax credit in the event of liquidation or insolvency of the institution and (ii) because, in accordance with point (c) of the first subparagraph of Article 39(2), they are replaced with a direct claim on the central government of the State in which the subsidiary is incorporated (Brazil).

3. Third plea in law, alleging misinterpretation of Article 39(2) of the CRR as regards the DTAs originated by the Brazilian subsidiary after 23 November 2016, since the amendment of that provision by Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 ([2]) did not affect DTAs originating in third countries.

([1]) OJ L 176, 27.6.2013, p. 1.

([2]) Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150, 7.6.2019, p. 1).