Reports of Cases

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

12 October 2022*

(Economic and monetary union – Banking union – Recovery and resolution of credit institutions – Early intervention measures – Decision of the ECB to place Banca Carige under temporary administration – Action for annulment – Action brought by a shareholder – Standing to bring proceedings – Interest separate from that of the bank – Admissibility – Error of law in the determination of the legal basis – Interpretation of national law by the EU Courts in conformity with EU law – Limit – Prohibition on interpreting national law *contra legem*)

In Case T-502/19,

Francesca Corneli, residing in Velletri (Italy), represented by M. Condinanzi, L. Boggio and F. Ferraro, lawyers,

applicant,

v

European Central Bank (ECB), represented by C. Hernández Saseta, A. Pizzolla and G. Marafioti, acting as Agents,

defendant,

supported by

European Commission, represented by V. Di Bucci, D. Triantafyllou and A. Nijenhuis, acting as Agents,

intervener,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

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

Registrar: P. Nuñez Ruiz, Administrator,

* Language of the case: Italian.

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

– the plea of inadmissibility raised by the ECB by separate document lodged at the Court Registry on 2 October 2019,

– the order of 29 April 2020 reserving the plea of inadmissibility for the final judgment, pursuant to Article 130(1) of the Rules of Procedure of the General Court,

– the decision of 24 June 2020 granting the Commission leave to intervene in support of the form of order sought by the ECB,

– the decision of the Court, pursuant to Article 28 of the Rules of Procedure, to assign the case to a Chamber sitting in extended composition,

– the measure of inquiry of 17 November 2021, by which the Court ordered the ECB, on the basis of Article 91(b) and Article 92(3) of the Rules of Procedure, to produce the full version of its Decision ECB-SSM-2019-ITCAR-11 of 1 January 2019 placing Banca Carige SpA under temporary administration, and the three decisions extending that measure,

– the decision of the Court of 15 December 2021, pursuant to Article 103(3) of the Rules of Procedure, granting the applicant and the Commission access to the documents produced by the ECB, by way of effective judicial protection,

further to the hearing on 19 January 2022,

gives the following

Judgment

1 By her action under Article 263 TFEU, the applicant, Ms Francesca Corneli, seeks annulment of ECB Decision ECB-SSM-2019-ITCAR-11 of 1 January 2019 placing Banca Carige SpA ('the bank') under temporary administration, as well as of any consequent or subsequent act, including, inter alia, ECB Decision ECB-SSM-2019-ITCAR-13 of 29 March 2019 extending the period of temporary administration up to 30 September 2019.

Background to the dispute and events subsequent to the bringing of the action

2 The bank is a credit institution established in Italy which is listed on the stock exchange and has been subject to direct prudential supervision by the European Central Bank (ECB) since 2014. It accumulated losses of more than EUR 1.6 billion between December 2014 and 1 January 2019. The applicant is a minority shareholder in the bank. When the action was brought, she held 200 000 ordinary shares, corresponding to 0.000361% of the bank's share capital.

3 In 2016, the ECB adopted an early intervention measure concerning the bank, by Decision ECB/SSM/2016 – F1T 87K3OQ2OV1UORLH26/26, which set objectives to be attained between 2017 and 2019 in respect of non-performing loans and related coverage.

4 In order to meet the objectives set, the board of directors, in September 2017, approved a recapitalisation plan designed to restore an adequate level of capital, to cover losses incurred and, more generally, to strengthen the capital structure in order to restore acceptable capital ratios.

5 Despite the issuing of instruments for an amount of EUR 544 million, which concluded on 21 December 2017, the bank did not comply, as at 1 January 2018, with the applicable capital requirements.

6 Subsequently, the bank unsuccessfully attempted to increase its capital in order to comply with the applicable requirements; an attempt to issue capital instruments failed three times in 2018 (in March, May and June) because of a lack of interest on the part of investors.

7 Those failures exacerbated tensions within the bank's board of directors which led to a number of resignations (16 between March 2016 and August 2018), making it necessary to appoint new members. Accordingly, at the extraordinary general meeting of 20 September 2018, the bank's shareholders renewed that board of directors and appointed Mr Modiano to the position of chairman. At the board of directors' meeting of 21 September 2018, Mr Innocenzi was appointed managing director.

8 At the end of September 2018, the bank still showed capital ratios below the requirements. The ECB then asked the bank to submit a capital conservation plan in accordance with Article 142 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338). The bank thus submitted a new capital conservation plan following the third unsuccessful attempt to increase its capital (see paragraph 6 above). However, being of the view that this plan contained no substantial amendment, the ECB refused to approve it and requested that the bank submit, by 30 November 2018 at the latest, a strategy aimed at restoring compliance with the requirements and ensuring the sustainability of that compliance by 1 January 2019.

9 In order to respond to that request, the bank's board of directors adopted, on 12 November 2018, a 'capital strengthening plan of November 2018' involving two stages, namely, first, the issue of Class 2 subordinated bonds and, second, an increase in capital subject to shareholder approval.

10 The first stage was carried out with a subscription of bonds in the amount of EUR 318.2 million by the voluntary intervention fund of the Fondo interbancario di tutela dei depositi (Interbank Deposit Protection Fund, Italy) and in the amount of EUR 1.8 million by Banco di Desio e della Brianza SpA.

11 The second stage could not be implemented following the objection, at an extraordinary general meeting held on 22 December 2018, of shareholders holding 70% of the capital, to an increase in capital through exchange of subordinated bonds for newly issued shares. Before taking their decision, the shareholders in question wished to receive communication of, first, the business plan and, second, the balance sheet relating to the business activities carried out by the bank in 2018.

12 Following those events:

– on 23 December 2018, the bank stated by press release that, following the rejection of the proposal made by its board of directors, the vice-chair and another member of that board had resigned with immediate effect;

– on 2 January 2019, another press release, also issued by the bank, announced the resignation, with effect from that date, of five other members of that board of directors, including the chairman, Mr Modiano, and the managing director, Mr Innocenzi;

– those resignations led to the disqualification of that board of directors pursuant to Article 18(12) of the bank's statutes and Article 2386 of the Italian Civil Code.

13 In accordance with the bank's statutes, the four members of the board of directors who had not resigned remained in office to ensure its day-to-day management.

14 On 1 January 2019, the ECB decided to place the bank under temporary administration ('the decision to place the bank under temporary administration'), which had the following effects:

– the bank's board of directors was dissolved and the former members were replaced by three temporary directors, who included Mr Modiano and Mr Innocenzi, who had been, respectively, the chairman and the managing director of that board of directors;

– the bank's supervisory committee was dissolved and the former members were replaced by three other persons;

– the mandate to 'take the necessary steps to ensure that [the bank] once again complies with asset requirements on a sustainable basis' was assigned to the new bodies.

15 On 2 January 2019, the adoption of the decision to place the bank under temporary administration was announced, at the same time, by both a press release from the ECB and a press release from the bank. On the same day, the trading of issued and guaranteed securities was suspended by the Commissione Nazionale per le Società e la Borsa (National Companies and Stock Exchange Commission, Italy) 'until the entry into force of the decision [to place the bank under temporary administration] or until the restoration, in particular as a result of the competent supervisory authorities' new initiatives, of a comprehensive disclosure framework for securities issued or guaranteed by the Bank'.

16 On 5 January 2019, the applicant asked the ECB for a copy of the decision to place the bank under temporary administration, under Article 6 of ECB Decision ECB/2004/3 of 4 March 2004 on public access to ECB documents (OJ 2004 L 80, p. 42); following the rejection of that application, the applicant brought an action for annulment of the rejection decision (judgment of 29 June 2022, *Corneli* v *ECB*, T-501/19, not published, EU:T:2022:402).

17 On 29 March 2019, the ECB extended until 30 September 2019 the period of temporary administration ('the extension decision'); the adoption of that decision was announced, by the bank, in a press release on 30 March 2019.

18 On 30 September 2019, the ECB extended the period of temporary administration until 31 December 2019 ('the second extension decision').

19 On 20 December 2019, the ECB extended the period of temporary administration until 31 January 2020 in order to allow for conclusion of the operation to strengthen the capital base ('the third extension decision').

Forms of order sought

20 The applicant claims that the Court should:

– annul the decision to place the bank under temporary administration as well as any consequent or subsequent act, including, in particular, the extension decision and successive extension decisions;

– order the ECB and the Commission to pay the costs.

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

– declare the action to be inadmissible or, in any event, unfounded;

– order the applicant to pay the costs.

Law

Admissibility

The acts the annulment of which is sought

22 In the present case, the applicant seeks the annulment of several acts:

– in the application, she requests annulment of the decision to place the bank under temporary administration and of 'any consequent or subsequent act', including the extension decision;

– in a letter sent to the Registry concerning the lodging of the reply, she specifies that the second extension decision, having been adopted in the meantime, must be included in the subject matter of the action;

– in the reply, she submits that the subject matter of the action must include the third extension decision on the same basis.

23 In that regard, it should be borne in mind that, under Article 76(d) of the Rules of Procedure of the General Court, the subject matter of the proceedings must be stated in the application.

24 Furthermore, actions for annulment must be directed against existing acts adversely affecting an individual (see judgment of 5 October 2017, *Ben Ali* v *Council*, T-149/15, not published, EU:T:2017:693, paragraph 59 and the case-law cited).

25 In the present case, the rules set out in paragraphs 23 and 24 above are complied with, first, with regard to the decision to place the bank under temporary administration and, second, with regard to the extension decision, since those two decisions are referred to in the application, they existed when the action was brought and they adversely affected the applicant at that time.

26 By contrast, the second and third extension decisions were adopted after the application had been lodged and are not referred to therein. It is true that the applicant referred, in the application, to 'any consequent or subsequent act' in addition to the decision to place the bank under temporary administration. However, such general wording cannot be regarded as satisfactory in the light of the requirement laid down in Article 21 of the Statute of the Court of Justice of the European Union and reproduced in Article 76 of the Rules of Procedure. According to those provisions, the subject matter of the proceedings must be identified in the application and, in the event of an action for annulment, the application must be accompanied by a copy of the contested act, so as to enable the subject matter of the dispute to be determined beyond any doubt. In the present case, it is clear that that requirement is not met where an applicant merely inserts in the application a statement of that nature.

27 In addition, it cannot be held that the applicant made a request to modify the application within the meaning of Article 86 of the Rules of Procedure, which provides:

– where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the General Court to rule without an oral part of the procedure, modify the application to take account of that new factor (paragraph 1);

– in such a case, the modification of the application must be made by a separate document within the time limit prescribed (paragraph 2).

28 Formally, the requirement to modify the application by means of a separate document has not been complied with in the present case. It is true that the applicant has challenged the lawfulness of the second and third extension decisions. However, that step was taken, as regards the two documents, on the one hand, in the reply and, on the other hand, in a letter sent to the Registry concerning the lodging of the reply. An indication included in a document concerning another measure cannot be regarded, in the light of the provision in question, as a request made by a 'separate document'.

29 It thus appears that the conditions laid down in Article 86 of the Rules of Procedure have not been complied with in the present case and that, consequently, the requests to modify the application are inadmissible. Accordingly, as is apparent from paragraphs 25 and 26 above, the action is admissible in so far as it is directed against the decision to place the bank under temporary administration and the extension decision ('the contested decisions'), but not in respect of 'any consequent or subsequent act', including the second and third extension decisions.

Standing to bring proceedings

30 Supported by the Commission, the ECB raises a plea of inadmissibility alleging that the applicant does not have the requisite standing to bring proceedings against the contested decisions, since those decisions are not of direct or individual concern to her.

31 In that regard, it should be noted that the standing required to bring an action for annulment is governed by the fourth paragraph of Article 263 TFEU, according to which, in the situation at issue in the present case, a natural or legal person must be directly and individually concerned by the decision which that person wishes to challenge where that decision is addressed to another person.

32 In order to give a ruling, it is necessary to examine those requirements in the light of the applicant's situation.

– *Whether the applicant is directly concerned*

33 According to the case-law, a person is directly concerned when, cumulatively, the contested measure:

– directly affects that individual's legal situation; and

– leaves no discretion to the addressees who are entrusted with implementing it, such implementation being purely automatic and resulting from EU rules without the application of an intermediate rule (see, to that effect, 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, 'the judgment in *Trasta*', EU:C:2019:923, paragraph 103).

34 As is apparent from the documents before the Court, the applicant's legal situation is, in the present case, affected by the contested decisions without the intervention of an intermediate measure, since those decisions themselves alter the applicant's rights to participate, as a shareholder, in the management of the bank in accordance with the applicable rules:

– thus, those decisions affect the applicant's right, as a shareholder, to elect the management and supervisory bodies of the bank, given that, in the absence of such decisions, the shareholders who, alone or together with others, hold a certain proportion of the capital may submit a list of candidates for election as members of the board of directors and the supervisory board and any shareholder may elect from among the candidates the members of those two bodies, in accordance with the statutes of the bank (Articles 18 and 26);

– furthermore, the decision to place the bank under temporary administration affects the right of shareholders, such as the applicant, to convene the general meeting of shareholders and to set the agenda, given that (i) according to Article 10(4) of the bank's statutes, the shareholders may request that a general meeting be held and put items on the agenda, (ii) in the present case that right is suspended by the contested decisions and (iii), in accordance with Article 70(2) of decreto legislativo n. 385 – Testo unico delle leggi in materia bancaria e creditizia (Legislative Decree No 385 – The Consolidated Law on banking and credit) of 1 September 1993 (Ordinary Supplement to GURI No 230 of 30 September 1993) ('the Consolidated Law on Banking'), only temporary administrators may convene the general meeting and set the agenda, with the approval of the ECB in accordance with Article 72(6) of the Consolidated Law on Banking;

– lastly, the contested decisions alter the conditions under which the managing and supervisory bodies may be held liable by shareholders, such as the applicant, given that (i) in principle governed by Article 2392 of the Italian Civil Code, their liability is limited, in the case of temporary administration, in accordance with Article 72(9) of the Consolidated Law on

Banking, to cases of intentional fault, or serious misconduct, (ii) moreover, that provision provides that actions of a civil nature brought against the temporary administrators are brought subject to the ECB's authorisation and that paragraph 5 of that article gives the temporary administrators the right to bring actions against members of the dissolved bodies of the bank or the managing director, thus depriving the meeting of the shareholders or the shareholders who together hold a certain proportion of the share capital from the right to bring such an action under Articles 2393 and 2393*bis* of the Italian Civil Code.

35 It is apparent from the foregoing that the legal relationship between the bank and its shareholders, of whom the applicant is one, was altered, without the intervention of any intermediate measure, by the contested decisions, which therefore directly concern her.

36 That conclusion is, however, disputed by the ECB and the Commission.

37 In the first place, those institutions submit, in essence, that the effect of the contested decisions on the situation of the shareholders, assuming it were proved, affected the exercise of their rights only temporarily, during the period covered by those decisions.

38 In that regard, it should be noted that, as regards judicial protection, no distinction is drawn between the effects produced by an act according to whether those effects relate to the existence or exercise of a right; a right exists in order to be exercised, with the result that, even if the effect produced by the act concerns the exercise of that right, the right is affected as regards the reason why it was created and conferred (see, to that effect, order of 25 June 2014, *Accorinti and Others* v *ECB*, T-224/12, not published, EU:T:2014:611, paragraph 89). Thus, nothing in the case-law indicates that situations in which the legal position of a party would be adversely affected for a limited period must be excluded from judicial protection.

39 The argument must therefore be rejected.

40 In the second place, the ECB and the Commission submit that the decision to place the bank under temporary administration did not affect the most essential rights of the shareholders, since, under the applicable rules, decisions of an important nature for the bank remained within the remit of the shareholders.

41 In that regard, it should be noted that, as the ECB and the Commission claim, certain decisions affecting the bank could still be taken, under temporary administration, by the shareholders at a general meeting. However, the meeting has to be convened in those cases by the temporary administrators; it cannot be convened by the shareholders themselves. There is no basis for singling out, from among the rights of the shareholders, those that are essential and deserve protection while those that are considered less important are deprived of such protection.

42 The argument must therefore be rejected.

43 In the third place, the ECB and the Commission submit that the rights allegedly affected belong to the general meeting and not to the shareholders individually. It follows, in their view, that the legal position of each individual shareholder is not directly affected by the contested decisions.

44 In that regard, it should be noted that the argument of the ECB and the Commission concerning the rights of the general meeting disregards, at the very least, the right to vote which allows each shareholder to participate individually in the election of members who will sit in management and

supervisory bodies. It is, however, apparent from the documents before the Court that, with the adoption of the decision to place the bank under temporary administration, that right could no longer be exercised by the shareholders on account of the temporary administration, since, under such a scheme, that appointment had to be decided by the ECB itself, without the ECB even having to consult the shareholders.

45 It is true that the vote cast by one particular shareholder does not, in itself, provide a basis for a decision to be taken at the meeting in the case where that shareholder does not hold a sufficiently large proportion of the share capital. However, that fact does not mean, as regards each shareholder, that that right to vote does not exist and accordingly does not have its necessary judicial protection.

46 The argument must therefore be rejected.

47 In the fourth place, in contrast to the applicant, who takes the view that the admissibility of the action in the present case may be based on the position adopted by the Court of Justice in the judgment in *Trasta*, the ECB and the Commission consider that that judgment rather confirms their point of view, namely that the action is inadmissible.

48 In that regard, it should be noted that, in that judgment, without addressing the individual concern of the shareholders, the Court of Justice ruled on the conditions under which the shareholders could be held to be directly concerned by a decision adopted in respect of banking supervision in relation to an establishment in which they held shares.

49 In that case, the ECB, in adopting that decision, had withdrawn the authorisation which that establishment required in order to carry on its banking activities. Following that withdrawal, the establishment in question had been liquidated, in accordance with national law, by a national court. In order to complete the liquidation successfully, that court had appointed a liquidator. In that case, the contested decision was the decision by which the authorisation had been withdrawn from that establishment by the ECB.

50 In the judgment in *Trasta*, the Court of Justice held that that withdrawal decision directly affected the legal situation of the establishment concerned itself, since, once the decision had been taken, the establishment was no longer authorised to continue its banking activities (paragraph 104).

51 By contrast, the withdrawal decision did not have such an effect on the shareholders. It is true that the value of the shares or the proportion of distributable dividends had fallen following the adoption of that decision. However, that effect was not, in the view of the Court of Justice, legal in nature, but, rather, economic. In itself, the withdrawal of authorisation did not, according to the Court of Justice, prevent shareholders from continuing to exercise their rights at the general meeting, for example, to seek a change to the objects of the establishment so as to enable it to pursue activities in a field other than banking.

52 In short, it is apparent from the judgment in *Trasta*, according to the Court of Justice, that only the liquidation decision affected the legal situation of the shareholders, since that decision entrusted the management of the establishment concerned to the liquidator, by depriving the shareholders of the possibility of influencing that management. That decision, however, had not been adopted by the ECB, but by a national court in accordance with national law, such a consequence, namely liquidation, not being provided for in EU law in the event of withdrawal of authorisation. Therefore, the withdrawal of authorisation, ordered by the ECB, did not actually

directly affect, in itself, the legal situation of the shareholders. Since the contested act was the withdrawal of authorisation, the action brought by the shareholders had to be declared inadmissible (paragraphs 105 to 115 of that judgment).

53 Accordingly, the judgment in *Trasta* concerned a different situation, since, unlike in the present case, the decision which was contested in the case that gave rise to that judgment had no impact, by itself, on the legal situation of the applicant shareholders.

54 The argument must therefore be rejected and, consequently, the applicant can be considered to be directly concerned, in the present case, by the contested decisions.

– *Whether the applicant is individually concerned*

55 According to the ECB and the Commission, the applicant is not individually concerned because her rights were affected by the contested decisions to an extent which is no different from that experienced by the bank's other shareholders.

56 In that regard, it should be borne in mind that, for the purposes of the fourth paragraph of Article 263 TFEU, persons other than those to whom it is addressed are individually concerned by a contested measure if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 107).

57 In the applicant's view, the requirement of individual concern is satisfied in the present case, since:

– she is part of a group the members of which were identified or identifiable when the contested decisions were adopted;

– and that identification could be based on criteria specific to the members of that group (see judgment of 23 April 2009, *Sahlstedt and Others* v *Commission*, C-362/06 P, EU:C:2009:243, paragraph 30 and the case-law cited).

58 In that context, as regards the first criterion, it should be noted that, as the applicant observes, she was identifiable, in her capacity as shareholder, at the time when the contested decisions were taken. The decision to place the bank under temporary administration was adopted on 1 January, that is to say, on a day when, since credit institutions were closed, the shares held in the capital could not be traded. As the ECB has acknowledged, it is indeed because of the impossibility of buying or selling shares that the decision to place the bank under temporary administration was taken on that day. At that time, the list of shareholders was closed. The identity of each of them could be verified, as required by the case-law. The situation was no different as regards the extension decision. It is true that that decision was not adopted on a public holiday, in contrast to the first decision. However the fact remains that, at the time of its adoption, the list of shareholders liable to be affected was also determined.

59 As regards the second criterion, it must be held, similarly, that the shareholders, who include the applicant, were affected, as a result of the adoption of the contested decisions, in respect of an attribute which characterised them individually, namely, first, that of holding shares in the bank and, second, that of being prevented, by the effect of those decisions, from exercising certain rights attaching to those shares.

60 The criterion relating to individual concern has been stated to mean that it may be considered to be satisfied, inter alia, where the contested act alters rights acquired, prior to its adoption, by the person concerned (see judgment of 13 March 2008, *Commission* v *Infront WM*, C-125/06 P, EU:C:2008:159, paragraph 72 and the case-law cited).

61 The applicant had, specifically, prior to the adoption of the contested decisions, rights attaching to her shares which, while acquired, were affected during the period covered.

62 In that regard, it should be noted that, under Article 70(2) of the Consolidated Law on Banking, the first effect produced by the placing of the bank under temporary administration is the suspension of the functions of the general meeting, that is to say, the possibility for shareholders to express their views on the proposals addressed to them.

63 In addition, among the shareholders, the applicant was one of those who had voted against the proposal submitted to the general meeting of 22 December 2018. That vote, even though it expressed only a request for postponement, led to the resignation of members of the board of directors, and subsequently the dissolution of that board, the bank then being placed in the situation which, in the context which it was facing, gave rise, as indicated in the decision to place the bank under temporary administration, to the intervention of the ECB, with suspension of the functions of the general meeting and thus of the possibility for the shareholders to influence, by means of their vote, the strategy to be followed by the bank.

64 In those circumstances, the requirements arising from the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17) can be considered to be met.

65 That conclusion is contested by the ECB and the Commission.

66 In the first place, they point out that, if the General Court were to reach the conclusion that the action for annulment is inadmissible, such a declaration of inadmissibility would not be contrary to the obligation imposed on the EU Courts to ensure that actual or potential applicants have effective judicial protection, since in such a case the applicant could still bring an action for damages before the EU Courts with a view to obtaining, if necessary, compensation for the damage suffered.

67 In that regard, it should be borne in mind that, according to the case-law, actions for annulment and actions for damages pursue objectives which, being distinct, must not be confused (judgment of 2 December 1971, *Zuckerfabrik Schöppenstedt* v *Council*, 5/71, EU:C:1971:116); in those circumstances, the EU Courts cannot take the view that a type of action (in the present case, an action for annulment) may be declared inadmissible on the ground that a second action (for example, an action for damages) might be held, for its part, to comply with the admissibility requirements.

68 The objection can therefore be rejected.

69 In the second place, the ECB submits, with the Commission's support, that the case-law concerning closed groups must be limited to entities with a small number of members. That, they argue, is not the case here because, at the time when the contested decisions were adopted, the bank had approximately 35 000 shareholders. In the view of those two institutions, to accept that

an action capable of being brought by such a large number of applicants is admissible would run counter to the approach followed in the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17).

70 In that regard, it should be noted that, as the ECB and the Commission point out, several judgments relied on by the applicant concern groups with a small number of members, for example 8 entities in the case which gave rise to the judgment of 22 June 2006, *Belgium and Forum 187* v *Commission* (C-182/03 and C-217/03, EU:C:2006:416, paragraph 63), 6 in the case which gave rise to the judgment of 13 March 2008, *Commission* v *Infront WM* (C-125/06 P, EU:C:2008:159, paragraph 76), or even 27 in the judgment of 1 July 1965, *Toepfer and Getreide-Import Gesellschaft* v *Commission* (106/63 and 107/63, EU:C:1965:65, p. 408).

71 According to the applicant, the sole purpose of the terms used in that case-law is, however, to explain the criterion in question, namely the requirement that the group concerned be composed of members identifiable at the time when the decision to place the bank under temporary administration is adopted, and thus constitutes a group which cannot be extended and which, consequently, has that characteristic of being 'restricted', 'limited' or even 'closed' (see, to that effect, judgments of 13 March 2008, *Commission* v *Infront WM* (C-125/06 P, EU:C:2008:159, paragraph 71), and of 27 February 2014, *Stichting Woonpunt and Others* v *Commission* (C-132/12 P, EU:C:2014:100, paragraph 59).

72 The applicant takes the view, in any event, that the case-law allows actions in situations which may involve a large number of applicants. That would be the case as regards actions brought by beneficiaries against decisions addressed by the Commission to one or more Member States in respect of schemes concerning aid granted or likely to be granted by the latter. Although that type of decision is not addressed to them, the case-law allows those beneficiaries to challenge before the General Court the legality of the decisions thus adopted, in spite of the fact that those applicants may be numerous, or even very numerous, depending on the type of scheme concerned (judgment of 28 June 2018, *Andres (insolvency of Heitkamp BauHolding)* v *Commission*, C-203/16 P, EU:C:2018:505).

73 In response, the Commission submits that, in such cases concerning beneficiaries of aid, the contested measures are regulatory and not individual in nature; indeed, they relate to national measures involving an aid scheme applicable to categories of persons with specific characteristics.

74 In that regard, it should be noted that the position adopted by the Commission concerning the regulatory nature of the acts referred to in cases concerning beneficiaries of aid would not have the effect of rendering the action inadmissible if that nature were to be confirmed. The fourth paragraph of Article 263 TFEU guarantees the admissibility of actions brought against regulatory acts where the situation of the applicants is affected without implementing measures. It is without the intervention of an intermediate measure of any kind that the contested decisions affected the legal situation of the shareholders, in the present case, by depriving them of the possibility of exercising some of the rights attached to their shares while the bank was under temporary administration (see, to that effect, judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori and Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraphs 28 and 58).

75 Thus, the Commission cannot legitimately, on the one hand, challenge the applicant's individual concern on the ground that she forms part of a category of economic operators and, on the other hand, maintain that the action is inadmissible because it is directed against a measure which, as regards such a category, is regulatory in nature, in a context in which that measure affected the applicant's legal situation without the intervention of an intermediate measure.

76 Accordingly, the second objection must also be rejected and the view can be taken, first, that the applicant is individually concerned by the contested decisions and, second, in the light of the considerations set out above regarding direct concern, that she satisfies the requirements imposed by the Treaty in respect of standing to bring proceedings.

Legal interest in bringing proceedings

77 The ECB claims that the applicant does not have the necessary legal interest to bring the present action.

78 In that regard, it should be noted that, in accordance with the case-law, in order to bring an action, the applicant must establish that she has an interest in bringing proceedings by demonstrating that the binding legal effects produced by the contested decisions are capable of affecting her interests, it being possible to adduce such proof by establishing that the act has brought about a distinct change in her legal position (see, to that effect, judgment of 13 October 2011, *Deutsche Post and Germany* v *Commission*, C-463/10 P and C-475/10 P, EU:C:2011:656, paragraph 37).

79 Since the applicant holds shares in the capital of an undertaking, the interest in bringing proceedings must be distinct from that pursued by the undertaking, in this case the bank in which she holds shares. Only the undertaking has the right, in principle, to bring an action in order to defend its own interest. If the interest to be defended is that of the undertaking, the shareholder may ask the general meeting or the management body to bring proceedings (see, to that effect, judgments of 20 June 2000, *Euromin* v *Council*, T-597/97, EU:T:2000:157, paragraph 50, and of 12 November 2015, *HSH Investment Holdings Coinvest-C and HSH Investment Holdings FSO* v *Commission*, T-499/12, EU:T:2015:840, paragraph 31).

80 Similarly, the European Court of Human Rights distinguishes between, on the one hand, actions brought by shareholders for the defence of their own rights and, on the other hand, actions brought by shareholders in order to protect the rights of the undertaking (ECtHR, 7 July 2020, *Albert and Others v. Hungary*, CE:ECHR:2020:0707JUD000529414).

81 In the present case, in order to justify her action, the applicant does not rely on the effect produced by the contested decisions on the bank, but highlights the impact that those decisions have on her own rights as a shareholder, in particular the right to convene a general meeting in order to propose the bringing of an action or the right to add a point to that effect to the agenda of such a meeting.

82 Thus, the view cannot be taken, as the ECB nevertheless does, that, if the contested decisions were annulled, the effect on the situation of the shareholders would be the same as the effect produced by annulment on the situation of the bank: acting on the basis of the effect which the contested decisions have on her own rights, the applicant can demonstrate that she has an interest in seeking annulment of those decisions which is not the same as that of the bank but can be distinguished from it. The requirement of a separate interest is therefore satisfied in the present case.

83 It follows from the foregoing that the action brought by the applicant may be declared admissible in so far as it was brought on her own behalf in respect of the contested decisions.

Substance

84 In support of the action, the applicant relies on seven pleas in law, alleging, respectively:

– infringement of the rules on proportionality;

– infringement of the duty to state reasons and of the right to be heard;

– the appointment, as temporary administrators, of persons who had previously performed important duties in the bank's management and administration;

– an error of law in the determination of the legal basis used to adopt the contested decisions;

– the fact that the ECB attempted to resolve governance problems by appointing persons who had created those problems;

– infringement, first, of the rules relating to the rights of the shareholder and, second, of the fundamental principles relating to the protection of property and savings, freedom of private economic initiative and self-determination of the citizen in his or her personal choices;

– inadequacy of the temporary administration to resolve the problem identified.

85 The Court considers it appropriate to begin by considering the plea alleging an error of law in the determination of the legal basis used to adopt the contested decisions.

The plea alleging that the ECB erred in law in determining the legal basis used to adopt the contested decisions

86 The applicant submits that the ECB erred in law in basing the contested decisions on Article 70(1) of the Consolidated Law on Banking, whereas that provision does not refer to the situation relied on to justify the temporary placement under administration, namely a 'significant deterioration' of the bank's situation.

87 The plea is disputed by the ECB, supported by the Commission.

88 In that regard, it should be noted that Article 69*octiesdecies*(1)(b) of the Consolidated Law on Banking, which transposes Article 28, entitled 'Removal of senior management and management body', of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC,

2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ 2014 L 173, p. 190), provides:

'1. The Bank of Italy may take the following measures in respect of a bank or the parent company of a banking group:

…

(b) removal of the actors referred to in Article 69*vicies semel*, in the event of a serious breach of laws, regulations or statutes or serious irregularities in the administration, or where the deterioration in the situation of the bank or banking group is particularly significant, provided that the measures referred to in (a) or provided for in Articles 53*bis* and 67*ter* are not sufficient to remedy the situation.'

89 For its part, Article 70 of the Consolidated Law on Banking, which transposes Article 29 of Directive 2014/59, entitled 'Temporary administrator', provides:

'1. The Bank of Italy may order the dissolution of the bodies exercising the administration and supervision functions of banks in the event of an infringement or irregularity referred to in Article 69*octiesdecies*(1)(b), or if serious financial losses are expected, or where dissolution is requested by reasoned application from the administrative bodies or by an extraordinary meeting.'

90 It is clear from that wording that the two provisions concern two different situations:

– on the one hand, Article 69*octiesdecies*(1)(b) governs the 'removal' of the managing or supervisory bodies of banks, which, once that measure has been taken, must be replaced in accordance with the procedures laid down in national and EU law;

– on the other hand, Article 70 governs the 'dissolution' (*scioglimento*) of the managing or supervisory bodies of banks, that dissolution resulting in the suspension of the functions of the assemblies and other bodies and in the setting up of extraordinary administration.

91 On a reading of Articles 28 and 29 of Directive 2014/59 which the abovementioned provisions are intended to transpose, the measures at issue cannot be regarded as equivalent or as alternatives, since the former is less intrusive than the latter, which may be adopted only if the replacement of the banks' management or supervisory bodies in accordance with the procedures of national and EU law is considered by the competent authority to be insufficient to remedy the situation.

92 The conditions for the application of Article 69*octiesdecies*(1)(b) of the Consolidated Law on Banking and of Article 70 of that law also differ. Thus, provision is made for the 'removal' of the management or supervisory bodies in cases of:

– serious infringements of laws, regulations or statutes;

– or serious administrative irregularities;

– or where the deterioration of the situation of the bank or banking group is particularly significant.

93 On the other hand, the 'dissolution' of the management or supervisory bodies and the setting up of extraordinary administration are provided for:

– in the event of serious breach of the laws, regulations or statutes referred to in Article 69 *octiesdecies*(1)(b);

– or in the event of serious administrative irregularities as referred to in Article 69*octiesdecies* (1)(b);

– or where serious financial losses are expected;

– or where dissolution is requested by reasoned application from the administrative bodies or by an extraordinary meeting.

94 It is clear from a textual analysis of the wording of the conditions for the application of Article 69 *octiesdecies*(1)(b) of the Consolidated Law on Banking and of Article 70 of that law that the conditions listed are exhaustive and are alternatives, as indicated by the use of the alternative conjunction 'or'. Thus, the second provision provides that the dissolution of the management or supervisory bodies of banks and the setting up of extraordinary administration are possible in four situations, two of which are provided for by the first provision and must, as the direct reference to that provision indicates, be interpreted in the same way as in the context of 'removal'. An analysis of the text also indicates that there is no hierarchy between those conditions.

95 It therefore follows from Article 69*octiesdecies*(1)(b) of the Consolidated Law on Banking and from Article 70 of that law that the latter provision does not provide for the dissolution of the administrative or supervisory bodies of banks and the establishment of extraordinary administration in the event that 'the deterioration of the situation of the bank or banking group is particularly significant'.

96 In the present case, the ECB, by the decision to place the bank under temporary administration, decided to 'dissolve [the bank's] administration and supervisory bodies and to replace them by three extraordinary commissioners and by a supervisory committee'.

97 In order to adopt that decision, it took the view, in paragraph 2.1, that 'the conditions laid down in Article 69*octiesdecies* and Article 70 of the Consolidated Law on Banking, i.e. a significant deterioration in the situation of [the bank], [were] satisfied', before concluding, in paragraph 2.6, that 'extraordinary administration [was] necessary and appropriate' and that 'the exercise of the power referred to in Article 70 [of that text was] also considered proportionate to address the serious situation [of the bank at that time]'.

98 Thus, it is apparent from the statement of reasons provided in the abovementioned decision that the power exercised by the ECB in the present case to place the bank under temporary administration is that referred to in Article 70 of the Consolidated Law on Banking, and the reference to Article 69*octiesdecies* of that provision does not invalidate that finding.

99 Similarly, in the extension decision, the ECB took the view that the temporary administration had to be continued on the ground that the 'significant deterioration of the supervised entity's situation' was ongoing (paragraph 2.1) and that 'the exercise of power under Article 70 [of the Consolidated Law on Banking]' was appropriate to the circumstances (paragraph 2.6).

100 It follows that the ECB infringed Article 70 of the Consolidated Law on Banking by relying, even though that condition was not provided for in that provision, on the 'significant deterioration in the situation of [the bank]' in order to dissolve the bank's management and supervisory bodies, set up a temporary administration and maintain that temporary administration during the period covered by the extension decision.

101 That conclusion is contested by the ECB and the Commission.

102 In the first place, those institutions observe that placement under temporary administration is provided for in Article 29 of Directive 2014/59. According to them, Article 70 of the Consolidated Law on Banking should be read in the light of that provision, which it was designed to transpose, in application of the principle of conforming interpretation. It follows from such a reading that placement under temporary administration is permitted under Article 70 even if the situation under consideration, namely the significant deterioration in the bank's situation, is not expressly referred to in that provision.

103 In that regard, it is settled case-law that when national courts apply domestic law they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by that directive. This obligation to interpret national law in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (see judgments of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 24, and of 19 January 2010, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 48 and the case-law cited; see also, by analogy, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 55, 57 and 58). The Court has the same duty to interpret national law in conformity with EU law in the light of a directive where it is led, as in the present case, under the relevant provisions, to apply that law.

104 Furthermore, in so far as the interpretation of a provision of national law is at issue, it should be borne in mind that, according to settled case-law, the scope of national laws, regulations or administrative provisions must be assessed in the light of the interpretation given to them by national courts (see judgment of 24 April 2018, *Caisse régionale de crédit agricole mutuel Alpes Provence and Others* v *ECB*, T-133/16 to T-136/16, EU:T:2018:219, paragraph 84 and the case-law cited).

105 However, that principle of conforming interpretation has certain limits. The obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law and it cannot serve as the basis for an interpretation of national law *contra legem* (judgments of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 100, and of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 25).

106 It follows that the obligation to interpret national law in conformity with EU law that has just been recalled cannot serve as a basis for an interpretation which runs counter to the wording used in the national measure transposing a directive.

107 That would, however, be the result if that method of interpretation were used in the present case. The measure adopted is that provided for by Article 70 of the Consolidated Law on Banking and, consequently, it is the conditions for the application of that article which must be satisfied. The reference to Article 69*octiesdecies* of that law in the decision to place the bank under temporary

administration – which might be explained by the reference to that article made in respect of two of the conditions for application set out in Article 70 thereof – cannot alter the applicable rules for the adoption of the measures referred to or the conditions for their application.

108 The 'deterioration in the situation of the bank' is not a generic expression, but rather a condition laid down by legislation that refers to an exhaustive list of four alternative conditions. Those conditions, explicitly laid down by law for the adoption of such an intrusive measure – the most intrusive in the system of early intervention – as that of the placement of a bank under temporary administration must be observed, and those conditions laid down for the adoption of the least intrusive measure cannot be regarded as sufficient to justify the adoption of the most intrusive measure, without a specific reference in the law.

109 The argument must therefore be rejected.

110 In the second place, the ECB and the Commission submitted at the hearing that the ECB was required to apply, in addition to national law, when acting as the competent authority under banking legislation, all the standards laid down in EU law; on that basis, it was required, according to those institutions, to apply the provision which, in Directive 2014/59, provides for placement under temporary administration in the event of a significant deterioration in the situation of the establishment in question.

111 In that regard, it should be noted that, as they point out, those two institutions must comply with EU law in their actions. That obligation stems from the principle of legality, which requires the institutions to observe, subject to review by the EU Courts, the rules to which they are subject. Specifically, that obligation is expressed, as regards prudential supervision, as the institutions concerned have pointed out, in Article 4(3) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the [ECB] concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63), which provides, inter alia, that, 'for the purpose of carrying out the tasks conferred on it by [that] regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of directives, the national legislation transposing those directives'.

112 It follows from that provision, however, that, where the EU law involves directives, it is the national law transposing those directives that must be applied. The provision cannot be read as having two distinct sources of obligations, namely EU law in its entirety, including directives, to which the national law transposing them should be added. Such an interpretation would imply that the national provisions differ from directives and that, in such a case, the two types of document are binding on the ECB as separate legislative sources. Such an interpretation cannot be accepted, since it would be contrary to Article 288 TFEU, which provides that 'a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. Furthermore, according to settled case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual (judgment of 26 February 1986, *Marshall*, 152/84, EU:C:1986:84, paragraph 48; see also judgment of 19 January 2010, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 46 and the case-law cited).

113 Thus, the error made by the ECB in the application of Article 70 of the Consolidated Law on Banking cannot be remedied by a free interpretation of the texts which would allow the conditions for the application of provisions conceived separately in Directive 2014/59 and national law to be reconstructed.

114 The plea must therefore be upheld and the contested decisions must therefore be annulled, without there being any need to examine the other pleas.

Costs

115 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.

116 Since the ECB has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the applicant, in accordance with the form of order sought by the latter.

117 Under Article 138(1) of the Rules of Procedure, the institutions which have intervened in the proceedings are to bear their own costs. In accordance with that provision, the Commission is to bear its own costs.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Annuls ECB Decision ECB-SSM-2019-ITCAR-11 of 1 January 2019 placing Banca Carige SpA under temporary administration and ECB Decision ECB-SSM-2019-ITCAR-13 of 29 March 2019 extending the duration of the period of temporary administration up to 30 September 2019;**

2. **Dismisses the action as to the remainder;**

3. **Orders the European Central Bank (ECB) to bear its own costs and to pay those incurred by Ms Francesca Corneli;**

4. **Declares that the European Commission is to bear its own costs.**

Papasavvas Gervasoni Madise

Nihoul Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 12 October 2022.

[Signatures]