Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

14 April 2021*

(Economic and monetary policy – Prudential supervision of credit institutions – Article 4(1)(d) and (3) of Regulation (EU) No 1024/2013 – Calculation of the leverage ratio – ECB's partial refusal to authorise the exclusion of exposures meeting certain conditions – Article 429(14) of Regulation (EU) No 575/2013 – Failure to examine all the relevant aspects of the individual case – *Res judicata* – Article 266 TFEU)

In Case T-504/19,

Crédit lyonnais, established in Lyon (France), represented by A. Champsaur and A. Delors, lawyers,

applicant,

v

European Central Bank (ECB), represented by J. Poscia, R. Ugena and F. Bonnard, acting as Agents, and by H.-G. Kamann, lawyer,

defendant,

APPLICATION under Article 263 TFEU seeking annulment of ECB Decision ECB-SSM-2019-FRCAG-39 of 3 May 2019, issued under Article 4(1)(d) and Article 10 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), and Article 429(14) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1, corrigenda OJ 2013 L 208, p. 68, OJ 2013 L 321, p. 6), in so far as it refuses to authorise the applicant to exclude certain exposures from calculation of its leverage ratio,

THE GENERAL COURT (Second Chamber),

composed of V. Tomljenović, President, F. Schalin and I. Nõmm (Rapporteur), Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 7 December 2020,

* Language of the case: French.

gives the following

Judgment

1 The applicant, Crédit lyonnais, is a joint stock company governed by French law and is approved as a credit institution. It is a subsidiary of Crédit agricole SA. As such, it comes under the direct prudential supervision of the European Central Bank (ECB).

2 On 5 May 2015, Crédit agricole, on its own behalf and on behalf of the entities in the Crédit agricole group, which include the applicant, sought authorisation from the ECB to exclude from the calculation of the leverage ratio the exposures made up of the sums associated with a number of regulated products taken out with the applicant but which it was obliged to transfer to the Caisse des dépôts et consignations (CDC), a French public institution, under Article 429(14) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1, corrigenda OJ 2013 L 208, p. 68, OJ 2013 L 321, p. 6 and OJ 2017 L 20, p. 2).

3 The products concerned are Livret A (Savings Passbook A), governed by Articles L.221-1 to L.221-9 of the code monétaire and financier (French Monetary and Financial Code) ('CMF'), the Livret d'épargne populaire (Popular Savings Passbook) ('LEP'), governed by Articles L.221-13 to L.221-17-2 of the CMF, and the Livret de développement durable and solidaire (Sustainable and Socially Responsible Passbook) ('LDD'), governed by Article L.221-27 of the CMF. Under Article L.221-5 of the CMF, a share of the total deposits collected on the basis of Livret A and the LDD is to be centralised in a savings fund managed by the CDC. The same applies to the LEP under Article R.221-58 of the CMF.

4 On 24 August 2016, the ECB adopted Decision ECB/SSM/2016-969500TJ5KRTCJQWXH05/165, issued under Article 4(1)(d) and Article 10 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), and Article 429(14) of Regulation No 575/2013, by which it refused to authorise Crédit agricole to exclude from calculation of the leverage ratio the exposures to the CDC made up of the proportion of the sums deposited on the basis of Livret A, the LDD and the LEP which it was required to transfer to the CDC. In that decision, the ECB concluded, in essence, that it followed from the wording of Article 429(14) of Regulation No 575/2013 that the competent authorities – in whose place it acted under Regulation No 1024/2013 – had a discretion to decide whether or not to exclude from the calculation of the leverage ratio exposures that met the conditions specified in that provision. Taking the view that the sums transferred to the CDC continued to be relevant exposures for the calculation of its leverage ratio, the ECB refused to grant Crédit agricole's application.

5 The ECB relied on three grounds. The first ground was based on the accounting treatment of the savings collected. The second ground comprised Crédit agricole's contractual obligation to reimburse customers' deposits, irrespective of the fact that the funds transferred to the CDC are returned. The third ground was based on the fact that there is a time lag between the adjustment of Crédit agricole's positions for balancing purposes and that of the CDC's positions. The ECB found that, during that period, Crédit agricole might have to have recourse to fire sales of assets

while awaiting transfers of funds from the CDC. The ECB concluded from those grounds that the mechanism for transferring funds from the CDC to Crédit agricole was imperfect and gave rise to prudential concerns that justified the rejection of its request.

6 By its judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the General Court annulled the ECB's decision referred to in paragraph 4 above. It held that the first two grounds relied upon by the ECB were vitiated by an error of law and that the third ground was vitiated by a manifest error of assessment.

7 On 26 July 2018, on its own behalf and on behalf of various entities in the Crédit agricole group, including the applicant, Crédit agricole again sought authorisation to exclude from the calculation of the leverage ratio the sums that it was obliged to transfer to the CDC.

8 On 21 February 2019, the ECB sent Crédit agricole a draft decision granting the benefit of the derogation sought to Crédit agricole and all the entities in the Crédit agricole group with the exception of the applicant, to whom the ECB envisaged granting only a partial derogation.

9 On 6 March 2019, Crédit agricole submitted its observations on the draft decision.

10 On 3 May 2019, the ECB adopted decision ECB-SSM-2019-FRCAG-39 ('the contested decision'), under Article 4(1)(d) and Article 429(14) of Regulation No 575/2013.

11 By the contested decision, the ECB authorised Crédit agricole and the entities in its group to exclude from calculation of their leverage ratio the proportion of the sums deposited on the basis of Livret A, the LDD and the LEP which they were required to transfer to the CDC, with the exception of the applicant, to whom only a 66% derogation was granted.

12 In point 2.1 of the contested decision, the ECB found that the conditions set out in Article 429(14)(a) to (c) of Regulation No 575/2013 were satisfied, on the grounds, first of all, that the CDC had to be regarded as a public sector entity; next, that the exposures to the CDC were treated for prudential purposes in accordance with Article 116(4) of that regulation; and, lastly, that the applicant was required to transfer a share of the savings deposited on the basis of Livret A, the LDD and the LEP to the CDC in order to fund investments of general interest. The ECB also emphasised, in essence, that those conditions were not satisfied as regards the proportion of the regulated savings for which there was no obligation to transfer to the CDC, irrespective of the purposes for which it was used.

13 In point 2.2 of the contested decision the ECB recalled, first, that the discretion given to the competent authorities when implementing Article 429(14) of Regulation No 575/2013 was intended to enable them to reconcile two objectives consisting, on the one hand, of compliance with the logic of the leverage ratio, which required that the calculation of that ratio included the overall exposure measure of a credit institution, without weighting by reference to the risk, and, on the other hand, allowing certain exposures with a particularly low risk profile, and which were not the result of an investment choice by the credit institution, not to be taking into account for the calculation of the leverage ratio and to be excluded from it.

14 Second, the ECB emphasised that the period between adjusting the positions of the credit institutions and those of the CDC posed a certain risk for the credit institutions since they remained liable for the deposits to the savers, and since the obligation to repay those deposits before sums were transferred from the CDC could have caused them to sell highly liquid assets

or to resort to fire selling of assets with a temporary haircut. It emphasised that the extent of that risk depended on the concentration of exposures to the CDC and stated, therefore, that a high or large-scale concentration of exposure to the CDC should have been reflected at least partially in the leverage ratio.

15 Third, in order to reconcile the two objectives referred to in paragraph 13 above, the ECB followed a methodology that took into account, first, the creditworthiness of central government, second, the risk of fire sales of assets and, third, an assessment of the concentration of exposures in question. That methodology meant, according to the ECB, that the lower the prudential risks, the higher the overall percentage exemption granted by it would be.

16 As regards the creditworthiness of the French central government, in point 2.2.1 of the contested decision the ECB found there to be no prudential issues that would have justified not granting the application to exempt exposures to the CDC from calculation of the leverage ratio. It nevertheless observed that the external credit rating bodies (ECAIs) had not given the French State the highest possible rating and that the five-year credit default swaps traded by the French State had a non-negligible probability of default.

17 As regards the risk of fire sales of assets, in point 2.2.2 of the contested decision the ECB stated, first, that the adjustment period of the positions with the CDC could lead a credit institution to resort to fire sales of assets in order to reimburse depositors, while awaiting the transfer of funds by the CDC. Second, the ECB found that, although a period of less than 5 days amounted to an almost instantaneous transfer entailing only a low risk of fire sales, the 10-day system of adjusting positions with the CDC implied that the period could be up to 10 days. Third, the ECB noted, on the one hand, that, during the recent banking crises, 10 to 30% of a credit institution's deposits – even its covered deposits – had been withdrawn in less than five days and, on the other, in essence, that Livret A was more liquid than a savings account. Fourth, the ECB emphasised that, although in a decision of 24 August 2016 it had conceded that the adjustment period for positions with the CDC did not give rise to a liquidity risk, that was in the context of assessing liquidity coverage requirements, which differed from assessment of the leverage ratio. Fifth, in relation specifically to the applicant, the ECB asserted that a withdrawal of 30% of savings in less than five days would have represented EUR 5.4 billion.

18 In relation to the assessment of the concentration of exposures to the CDC, in point 2.2.3 of the contested decision, the ECB emphasised, first, that the Crédit agricole group had a solidarity mechanism involving a legal obligation between the member entities to provide support, in the form of capital and liquidity, thereby justifying the assessment of the level of concentration for the member entities at group level. On that basis, it concluded that there was no concentration risk within the meaning of Article 81 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).

19 Second, in relation specifically to the applicant, the ECB observed that the applicant was not covered by the Crédit agricole group solidarity mechanism and, therefore, in relation to the applicant, the concentration risk had to be examined on a sub-consolidated basis. Since the ratio between exposures to the CDC and the applicant's Tier 1 capital was 134% in 2015 and 231% in 2018, the ECB found that the exposures to the CDC did present a concentration risk.

20 The ECB concluded that, in order to mitigate the impact on capital of a massive withdrawal of deposits, it was prudent to include a level of exposures to the CDC in the calculation of the applicant's leverage ratio, and set that level at 34%.

Procedure and forms of order sought by the parties

21 The applicant brought this action by application lodged at the Registry of the General Court on 12 July 2019.

22 On 30 June 2020, the General Court requested information from the ECB, in the form of measures of organisation of procedure under Article 89 of its Rules of Procedure. Pursuant to the observations on the ECB's response, submitted by the applicant on 28 September 2020, additional questions were put to the ECB on 15 October 2020.

23 On a proposal from the Judge-Rapporteur, the General Court (Second Chamber), decided to open the oral part of the procedure.

24 At the hearing on 7 December 2020, the parties submitted oral argument and their answers to the oral questions put by the Court.

25 The applicant claims that the Court should:

– annul the contested decision in so far as it refuses to authorise the applicant to exclude 34% of its exposure to the CDC from the calculation of its leverage ratio;

– order the ECB to pay the costs.

26 The ECB claims that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

27 By its action, the applicant disputes the lawfulness of the contested decision, made on the basis of Article 4(1)(d) of Regulation No 1024/2013 and Article 429(14) of Regulation No 575/2013.

28 According to Article 4(1)(d) of Regulation No 1024/2013, one of the tasks conferred on the ECB is 'to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters'. Furthermore, since the applicant forms part of a group subject to the direct prudential supervision of the ECB, that task falls to be implemented directly by the ECB and not by the national authorities in the context of the single supervisory mechanism (see to that effect, judgment of 16 May 2017, *Landeskreditbank Baden-Württemberg* v *ECB*, T-122/15, EU:T:2017:337, paragraph 63).

29 Under Article 4(3) of Regulation No 1024/2013, ‘for the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law’. Regulation No 575/2013 is one of those relevant provisions.

30 According to Article 429(14) of Regulation No 575/2013, the ‘competent authorities may permit an institution to exclude from the exposure measure exposures that meet all of the following conditions: (a) they are exposures to a public sector entity; (b) they are treated in accordance with Article 116(4); (c) they arise from deposits that the institution is legally obliged to transfer to the public sector entity referred to in point (a) for the purposes of funding general interest investments’.

31 As set out in paragraphs 10 to 20 above, by the contested decision the ECB partially refused to grant the applicant’s application under Article 429(14) of Regulation No 575/2013 for all its exposures to the CDC, consisting of the proportion of the deposits received as regulated savings that it is obliged to transfer to the CDC, to be excluded from its leverage ratio. The ECB applied a methodology that took into account, first, the creditworthiness of the French central government, second, the risk of fire sales of assets and, third, an assessment of the concentration of exposures in question. Those criteria were examined in the grounds in points 2.2.1 to 2.2.3 respectively of the contested decision.

32 The applicant relies, inter alia, on three pleas in law in support of its action.

33 The first plea alleges an infringement of Article 266 TFEU. In that plea the applicant claims, in essence, that the three grounds relied upon by the ECB in the contested decision do not reflect due compliance with the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472). The second plea relates specifically to the ground alleging the concentration risk posed by the applicant’s exposures to the CDC. It alleges in essence that the ECB committed errors of law. The third plea claims that the grounds of the contested decision are not well founded and alleges manifest errors of assessment by the ECB.

The first plea in law, alleging, in essence, infringement of Article 266 TFEU

34 The applicant submits that the three grounds of the contested decision – that is to say, the assessment of the creditworthiness of central government, the risk of fire sales of assets resulting from the 10-day adjustment period and the high concentration of its exposures to the CDC – on the basis of which the ECB refused to grant in full the application made under Article 429(14) of Regulation No 575/2013 in so far as concerns the applicant, have already been examined and dismissed by the General Court in its judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), which according to the applicant has the force of *res judicata*. It refers in that respect to paragraphs 61 to 63, 66, 80 and 81 of that judgment.

35 According to the first paragraph of Article 266 TFEU, the institution whose act has been declared void shall be required to take the necessary measures to comply with the judgment. Those rules provide for the sharing of powers between the judicial authority and the administrative authority, according to which it is for the institution that issued the act annulled to determine what measures are required to comply with a judgment annulling a decision (see judgment of 5 September 2014, *Éditions Odile Jacob* v *Commission*, T-471/11, EU:T:2014:739, paragraph 55 and the case-law cited).

36 In order to comply with a judgment annulling a measure and to implement it fully, the institution is required, according to settled case-law, to have regard not only to the operative part of the judgment but also to the grounds which led to the judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the annulled measure (judgments of 26 April 1988, *Asteris and Others* v *Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 27; of 6 March 2003, *Interporc* v Commission, C-41/00 P, EU:C:2003:125, paragraph 29; and of 13 September 2005, *Recalde* v *Commission*, T-283/03, EU:T:2005:315, paragraph 50).

37 Article 266 TFEU requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in the judgment annulling the original act (judgments of 6 March 2003, *Interporc* v *Commission*, C-41/00 P, EU:C:2003:125, paragraph 30, and of 13 September 2005, *Recalde Langarica* v *Commission*, T-283/03, EU:T:2005:315, paragraph 51).

38 Last, it must be observed that Article 266 TFEU requires the institution which adopted the annulled measure only to take the necessary measures to comply with the judgment annulling its measure (judgments of 6 March 2003, *Interporc* v *Commission*, C-41/00 P, EU:C:2003:125, paragraph 30, and of 5 September 2014, *Éditions Odile Jacob* v *Commission*, T-471/11, EU:T:2014:739, paragraph 57). The procedure for replacing an annulled measure may therefore be resumed at the very point at which the illegality occurred (see judgments of 29 November 2007, *Italy* v *Commission*, C-417/06 P, not published, EU:C:2007:733, paragraph 52 and the case-law cited, and of 5 September 2014, *Éditions Odile Jacob* v *Commission*, T-471/11, EU:T:2014:739, paragraph 58).

39 The applicant's reasoning can appropriately be divided into three parts, according to whether the ground for the alleged failure to implement the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), is that set out in point 2.2.1, point 2.2.2 or point 2.2.3 respectively of the contested decision.

The ground concerning the creditworthiness of central government (point 2.2.1 of the contested decision)

40 The applicant notes that in order to comply with the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the ECB was required to examine and establish the likelihood of a risk of default by the French State. According to the applicant the ECB acknowledges in the contested decision that there are no specific prudential concerns relating to the ability of central government to meet its obligations and it merely emphasises that the rating given to the French State by the ECAIs is not the highest possible and that the probability of default is not zero. Those factors do not establish a likelihood, that is to say, a reasonable probability, of default.

41 The ECB submits that the criterion of the creditworthiness of the French State is only one of the criteria examined in the contested decision. It adds that it did analyse the likelihood of such a risk of default in the contested decision, as a result of which it assigned the French State credit quality step 1 under Article 114(2) of Regulation No 575/2013, to which Article 429(14) refers by virtue of Article 116(4). The ECB states that it found there to be an insufficient risk of default to justify refusing the exemption sought on that basis alone, but that the risk was not zero.

42 The ECB asserts that the Court criticised its analysis only to the extent that, as grounds for rejecting the application for exemption, it found that a State can be in default of payment, as a matter of principle and without examining the case at hand. It infers from this that in order to comply with the requirements of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), it needed only to examine the risk of the French State defaulting, since whether or not that risk was likely fell within the exercise of its discretion.

43 The Court points out that, in paragraphs 59 to 62 and 66 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the ECB was found to have committed an error of law only to the extent that it confined itself to highlighting the possibility of a payment default by the French State without examining the likelihood of default. The ECB was therefore not prevented by that judgment from taking the possibility of default by the French State into account in its analysis, but was required to analyse the likelihood of that risk.

44 It can be seen from point 2.2.1 of the contested decision that the ECB referred to two considerations on the basis of which it found that, although the creditworthiness of the French central government posed no prudential issues which would have justified it not granting the application to exempt exposures to the CDC from calculation of the leverage ratio, the risk of default by the French State was not zero. Those two considerations were, first, the fact that the ECAIs had not given the French State the highest possible rating and, second, the fact that the probability of default of five-year credit default swaps traded by France was 0.611%.

45 Accordingly, since in the contested decision the ECB did analyse the likelihood of default by the French State, it did not fail to comply with the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), and the applicant’s reasoning on that point in the first part of the first plea in law must therefore be dismissed.

46 The applicant’s claim that the ECB failed to demonstrate the likelihood of default by the French State, for its part, concerns the merits of the ECB’s analysis. It should therefore be examined, if necessary, in relation to the third plea in law.

The ground concerning the concentration of exposures to the CDC (point 2.2.3 of the contested decision)

47 In the applicant’s view, the ECB could not take the criterion of the level of concentration of exposures to the CDC into account without disregarding the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472). First, the applicant notes that the Court held that the concentration criterion would only be relevant in the event that the sums transferred as regulated savings were not received from the CDC as the result of a payment default by the French State. Second, it submits that the ECB has not demonstrated that any such default was likely.

48 The ECB states in response that, since it did examine and establish the probability of default by the French State, it was entitled to take into account the level of concentration of the applicant’s exposures to the CDC. It adds that this ground was not a decisive factor and was assessed in the light of the other criteria identified, as borne out by the methodology used in the contested decision.

49 In paragraph 63 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the Court held that in so far as the ECB did not examine the likelihood of a payment default by the French State, the reference to the volume of the applicant’s exposures to the CDC likewise could

not justify in itself those exposures being taken into account in the calculation of the leverage ratio. The Court stated that that volume might have been relevant only if, as a result of a payment default by the French State, the applicant had not been able to obtain from the CDC the sums transferred as regulated savings and had needed to have recourse to forced sales of assets.

50 The ECB could therefore take account of the level of concentration of the applicant's exposures to the CDC without thereby disregarding the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), provided it did so in conjunction with an examination of the likelihood of a payment default by the French State. As set out in paragraphs 44 and 45 above, the ECB did carry out such an examination.

51 The second part of the first plea must therefore be dismissed.

The ground concerning a risk of fire sales of assets (point 2.2.2 of the contested decision)

52 The applicant asserts that proper implementation of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), required the ECB to carry out a thorough examination of regulated savings, in order to determine whether it is possible that withdrawals of regulated savings could be so large and sudden as to exceed the 'gravely stressed conditions' envisaged in the context of the calculation of the liquidity ratio. It submits that the ECB failed to carry out such an examination.

53 It asserts, first, that the ECB has not demonstrated how a time lag, which the ECB concedes does not involve any liquidity risk, could nevertheless pose a leverage risk.

54 Second, the ECB confined its assessment to general hypothetical considerations and did not examine the specific characteristics of regulated savings. The applicant asserts, in that regard, that the hypothesis of sudden massive withdrawals that the ECB envisages in the contested decision is not supported by any specific information and cannot be transposed to regulated savings, which have a dual State guarantee for both depositors and credit institutions and are a safe investment in the event of a crisis.

55 The applicant adds that the ECB's reasoning is based on the premiss that a recent precedent showed that massive withdrawals of regulated savings (of between 10 and 30% of deposits) could occur within a short time. The applicant contends both that the contested decision gives no specific details of the example on which the ECB relies and that the example is irrelevant.

56 The applicant infers from the foregoing that neither the hypothesis of a massive withdrawal of regulated savings nor that of a fire sale of assets is credible, and that by reasoning as it does the ECB disregarded the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472).

57 The ECB submits that the Court held in the judgment in question that the adjustment period for positions could be a relevant criterion for assessing the leverage risk, although not for the liquidity risk, where withdrawals by depositors were sufficiently large to exceed the 'gravely stressed conditions' envisaged in the context of the calculation of the liquidity ratio.

58 The ECB claims that it carefully and impartially examined the characteristics of regulated savings and found as a result that customer withdrawals could have exceeded the 'gravely stressed conditions' and that, therefore, it correctly used the adjustment period criterion in its assessment. It states that the adjustment period for positions with the CDC may be 10 days, with the effect that the second column in the table in the contested decision applied.

59 The ECB acknowledges that savings products are safe investments in times of crisis, but takes the view, in essence, that that characteristic is unconnected with the risk of a bank run, which applies to regulated savings because they are highly liquid. It notes in that respect that there is no legal limitation on withdrawals of regulated savings, which are therefore comparable to conventional current accounts. The ECB adds that the State guarantee likewise is capable of guarding against all risks of a bank run, since the contested decision recalls that massive withdrawals – in the region of 10 to 30% – of deposits covered by a guarantee scheme occurred during recent banking crises.

60 The ECB asserts that it can be determined from the information in the contested decision that the example on which it relies is relevant.

61 Last, the ECB contends, in essence, that examining the leverage risk is different from examining the liquidity risk and that Article 429(14) of Regulation No 575/2013 does not lay down any method that must be followed when examining applications made under that article.

62 In paragraphs 70 and 71 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the Court stated that the risks associated with excessive leverage – that is to say, the need for a bank to take unintended corrective measures to its business plan, including distressed selling of assets which might result in losses or in valuation adjustments to its remaining assets – materialised because of insufficient liquidity. In paragraphs 73 to 78 of that judgment, the Court further noted that, in decisions on liquidity ratios, the ECB had found that the adjustment period for positions with the CDC did not give rise to a liquidity risk, and that this view was shared by the European Banking Authority (EBA) in its report of 15 December 2015 on net stable funding requirements under Article 510 of Regulation No 575/2013. Those findings led the Court to set out three conclusions.

63 First, in paragraph 79 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the Court held that the ECB's position of principle that the adjustment period in question could have favoured the occurrence of risks linked with excessive leverage even though it did not constitute a liquidity risk was, owing to its general nature, manifestly incorrect.

64 Second, in paragraph 80 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the Court held that the adjustment period for positions with the CDC could be relevant for the leverage risk, even though it was not relevant for the liquidity risk, only where withdrawals of deposits linked with regulated savings were sufficiently large for those savings to exceed the 'gravely stressed conditions' envisaged in the context of the calculation of the liquidity ratio under Article 412(1) of Regulation No 575/2013.

65 Third, in paragraph 81 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), the Court emphasised that such a possibility could not be taken into account for the purposes of rejecting the applicant's request without the ECB carrying out a thorough examination of the characteristics of the regulated savings. That examination ought, in particular, to have led the ECB to consider whether, in the light of the characteristics of regulated

savings, it might be envisaged that withdrawals of them would be sufficiently large and sudden for recourse to be had to the measures envisaged in Article 4(1)(94) of Regulation No 575/2013 without it being possible to await the transfers of funds from the CDC on the basis of the adjustment of the positions.

66 It follows that the Court did not rule out that the period for the adjustment of positions with the CDC could be taken into account when assessing the leverage risk – even though that period does not pose any problems in terms of the liquidity ratio – but held that it could be taken into account only where withdrawals exceeded the 'gravely stressed conditions' envisaged for the liquidity ratio. The Court also drew attention to the ECB's duty to base its assessment on a thorough examination of the characteristics of regulated savings.

67 In point 2.2.2 of the contested decision the ECB took the view that massive withdrawals of regulated savings could take place within a short period (up to 30% in less than five days) notwithstanding the associated State guarantee. It justified that assessment based on, first, the experience of the recent banking crises, which allegedly shows that 10 to 30% of the deposits of a credit institution were withdrawn in less than five days, and second, the fact that regulated savings are particularly liquid. The ECB also noted that a withdrawal of 30% of the deposits at issue would have required the applicant to repay nearly EUR 5.4 billion.

68 That means that, first, by referring to massive withdrawals in a short period, the ECB took the period for adjusting the applicant's positions with the CDC into account only in relation to the situation envisaged in paragraph 80 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), and therefore did not disregard the finality of that judgment in that respect. The applicant's reasoning on that point in the third part of the first plea must therefore be dismissed.

69 Second, the Court holds that the question of whether the ECB complied with paragraph 81 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), by carrying out a thorough examination of regulated savings, is inseparable from assessment of the merits of the contested decision and should be examined together with the third plea in law.

The second plea in law, alleging infringement of Article 429(14) and Article 400(1)(a) of Regulation No 575/2013

70 This plea, concerning the legality of the ground in point 2.2.2 of the contested decision and turning on the level of concentration of the applicant's exposures to the CDC, may be divided into two parts.

71 In the first part, the applicant alleges in essence that the ECB relied on the concentration risk represented by exposures to the CDC whereas that risk may not be taken into account when applying Article 429(14) of Regulation No 575/2013.

72 In the second part, the applicant argues in essence that, by adopting a methodology of general scope when assessing that risk, the ECB assumed rule-making powers although only individual decision-making authority has been delegated to it.

The first part of the second plea, alleging that the concentration risk of exposures to the CDC should not have been taken into account

73 The applicant considers that the fact that the ECB took the concentration risk into consideration demonstrates that it uses the powers conferred on it under Article 429(14) of Regulation No 575/2013 for purposes other than those intended, that is to say, to control the concentration risk represented by exposures to the CDC, whereas under Article 400(1)(a) of Regulation No 575/2013 sovereign exposures are not taken into account in calculating that risk. According to the applicant, the ECB therefore, first, infringed Article 400(1)(a) of Regulation No 575/2013 and, second, used the power conferred on it by Article 429(14) of Regulation No 575/2013 for a purpose not envisaged by that article.

74 The ECB asserts that the applicant's arguments should be dismissed.

75 In essence, the applicant makes two complaints in the first part of the second plea in law, alleging infringement of, first, Article 400(1)(a) of Regulation No 575/2013 and, second, Article 429(14) thereof.

76 It must be observed at the outset, since the applicant is claiming that the ECB should not have taken the concentration risk into account when examining the leverage ratio, that both Directive 2013/36 and Regulation No 575/2013 refer to the concept of concentration risk.

77 According to Article 81 of Directive 2013/36:

‘Competent authorities shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer, is addressed and controlled including by means of written policies and procedures.’

78 Article 395(1) of Regulation No 575/2013 relates to the concentration risk posed by a client or group of connected clients. It is intended in essence to prevent exposures to such clients from exceeding 25% of the institution's capital or EUR 150 million, whichever is the higher.

79 This shows that the treatment and control of concentration risk are intended, in essence, to assess the level of diversification of a credit institution's exposures and to prevent any over-concentration of its exposures to certain counterparties.

80 First, as regards the complaint alleging infringement of Article 429(14) of Regulation No 575/2013, the question arises whether the level of concentration of the exposures to the CDC at issue is a relevant consideration when applying that article.

81 It must be observed in that regard that the Court emphasised, in paragraph 51 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), that the discretionary power given to the competent authorities under Article 429(14) of Regulation No 575/2013 was intended to enable them to reconcile the objective of the leverage ratio – namely to measure the overall exposure measure of a credit institution, without weighting by reference to the risk – and the possibility that certain exposures with a particularly low risk profile and which are not the result of an investment choice by the credit institution may be excluded from calculation of that ratio.

82 Where the risk of default by the counterparty cannot be ruled out, the level of concentration of the exposures in question may be a relevant consideration when the ECB is required to reconcile those factors.

83 That is what the Court found in paragraph 63 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472). The ECB's argument relying on the volume of exposures to the CDC was not rejected because that consideration is not found to be relevant. To the contrary, the Court found that the volume of exposures to the CDC might have been relevant if, as a result of a payment default by the French State, the applicant was not able to obtain from the CDC the sums transferred as regulated savings and needed to have recourse to forced sales of assets.

84 The ECB therefore did not err in law by taking into account the level of concentration of the applicant's exposures to the CDC when applying Article 429(14) of Regulation No 575/2013.

85 Second, in the complaint alleging infringement of Article 400(1)(a) of Regulation No 575/2013, the applicant submits, in essence, that the ECB was not entitled to take the CDC concentration risk into account because that type of exposure is excluded from calculation of the concentration risk.

86 Indeed, under Article 400(1)(a) of Regulation No 575/2013, exposures to the CDC are exempt from application of Article 395(1) thereof, that is to say, they are not taken into account in assessing the concentration risk to which that article relates. However, that ruling does not concern compliance with Article 395(1) of that regulation but compliance with Article 429(14).

87 It follows that Article 400(1)(a) of Regulation No 575/2013 does not apply in the present case, and the applicant therefore cannot criticise the ECB for infringing it.

88 The first part of the second plea must therefore be dismissed.

The second part of the second plea in law, alleging, in essence, that the ECB applied a methodology of general scope

89 The applicant asserts that the powers that Regulation No 1024/2013 confers on the ECB are limited to verifying that credit institutions comply with Regulation No 575/2013, and that the ECB has no rule-making power. It submits that the ECB presents the scale for concentration levels contained in the contested decision as being general in scope since it is intended to apply to any credit institution that applies to enjoy the benefit of Article 429(14) of Regulation No 575/2013. Accordingly, it alleges, the ECB is seeking to address a general risk arising from exposures to public sector entities and is thereby exceeding the powers conferred on it by Article 4(1)(d) of Regulation No 1024/2013.

90 The ECB asserts that the applicant's arguments should be dismissed.

91 As observed in paragraph 15 above, in the contested decision the ECB has applied a methodology having regard to three criteria, including the criterion of the level of concentration of the exposures at issue. That methodology is reflected in a table setting out the exemption percentages calculated on the basis of the interaction between those three criteria.

92 By means of that methodology the ECB merely set out a rule of practice indicating how it intended to use the power conferred on it by Article 429(14) of Regulation No 575/2013.

93 It must be observed that the EU Courts have found equivalent procedures limiting discretionary power to be lawful, whether the rule of practice is set out in internal directives (see to that effect, judgments of 30 January 1974, *Louwage* v *Commission*, 148/73, EU:C:1974:7, paragraph 12, and of 24 October 2018, *Fernández González* v *Commission*, T-162/17 RENV, not published, EU:T:2018:711, paragraph 60) or in published guidelines (see to that effect, judgments of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 209 to 211, and of 30 May 2013, *Quinn Barlo and Others* v *Commission*, C-70/12 P, not published, EU:C:2013:351, paragraph 53).

94 Contrary to the applicant's assertion, that methodology is not equivalent to the ECB adopting a normative act exceeding the powers conferred on it by Regulation No 1024/2013. It is in fact merely a rule indicating the practice to be followed and whose existence does not relieve the ECB of the requirement to examine each individual situation specifically, as a result of which it may decline to apply that methodology (see to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 209 to 211).

95 Under those circumstances, the ECB was entitled to draw attention in the contested decision to the methodology it intended to follow when applying Article 429(14) of Regulation No 575/2013, so long as it did not dispense with the need to carry out a specific examination of the applicant's individual situation.

96 The second part of the second plea and, accordingly, the second plea in its entirety, must therefore be dismissed.

The third plea in law, alleging manifest errors of assessment by the ECB

97 The applicant submits that the three grounds of the contested decision on which the ECB relied in order to refuse to grant its application in its entirety are vitiated by manifest errors of assessment.

98 As regards the extent of the scope of the Court's judicial review of the merits of those grounds, because the ECB has discretion and, accordingly, a broad power of assessment when deciding whether or not to grant the benefit of Article 429(14) of Regulation No 575/2013, that review must not lead the Court to substitute its own assessment for that of the ECB, but focuses on whether the contested decision is based on materially incorrect facts or is vitiated by an error of law, manifest error of assessment or misuse of powers (see judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472, paragraph 30 and the case-law cited)).

99 However, it follows from settled case-law that when the institutions have such a power of assessment, respect for the guarantees conferred by the EU legal order in administrative proceedings assumes even more fundamental significance. Among those guarantees conferred by the EU legal order in administrative proceedings is, in particular, the principle of sound administration, which entails the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472, paragraph 31 and the case-law cited)).

100 The Court observes that the applicant's reasoning can be divided into three parts, which question the merits of the grounds of the contested decision as regards, first, assessment of the risk of fire sales of assets (point 2.2.2 of the contested decision); second, assessment of the creditworthiness of central government (point 2.2.1 of the contested decision); and, third, the level of concentration of its exposures to the CDC (point 2.2.3 of the contested decision).

101 Under the first part of the third plea, the applicant submits that the ECB failed to discharge its obligations resulting from the case-law summarised in paragraph 99 above by failing to take the characteristics of regulated savings into account when assessing the risk of fire sales of assets. First, on account of the dual State guarantee, regulated savings serve as a safe investment in the event of a crisis. Second, according to the applicant, regulated savings differ fundamentally from other external resources, such as debt or ordinary deposits, because on the balance sheet they are divided symmetrically between centralised regulated deposits and identical amounts owed by the CDC. Third, the volume of regulated savings is not contingent on the strategy of the credit institution but on factors beyond its control, the institution acting merely as a conduit between the depositor and the CDC. Fourth, the fact that regulated savings do not create a leverage risk is in its view confirmed by an EBA report and by the EU legislature, which according to the applicant put in place an automatic exemption mechanism when it reformed Regulation No 575/2013.

102 Furthermore, the applicant refers to the arguments it set out in relation to the first plea in law and reiterates its reasoning to the effect, first, that the ECB has failed to show in what respect the same 10-day adjustment period poses a risk of liquidity in relation to assessment of the leverage ratio whilst not posing any such risk in relation to assessment of the liquidity ratio and, second, that the hypothesis of a bank run on 10 to 30% of deposits in less than five days on which the ECB relies is unverifiable and irrelevant.

103 The ECB contends that it did take into account the specific characteristics of regulated savings. First, the fact that regulated savings are particularly safe is because there is no risk of losing the capital deposited and has no effect on the risk of a bank run, which would arise from the fact that such deposits are particularly liquid. Second, according to the ECB the balance sheet symmetry of regulated savings has no effect on the leverage risk and is in any event not absolute. Third, the applicant wrongly asserts that it cannot influence any increase in the outstanding amount of its regulated savings, since marketing that type of saving involves it taking steps and since the applicant promotes that type of saving. Fourth, the ECB disputes that the EBA's opinion and the amendment made when Regulation No 575/2013 was reformed are relevant.

104 The ECB also refers to the reasoning it has already set out in respect of the first plea in law. It considers that it correctly assessed the risk of fire sales of assets pending the adjustment of positions with the CDC and reiterates its assertion that the figures of withdrawals of 10 to 30% within five days are taken from a recent example. It claims that it has demonstrated that the 10-day adjustment period can give rise to leverage risk and asserts that this criterion was not the sole ground for the contested decision. Last, it claims that it did explain that assessment of liquidity risk is different in the context of assessing the leverage ratio and in the context of the liquidity ratio because that risk was capable of exceeding the 'gravely stressed' conditions envisaged in the context of the liquidity ratio.

105 It follows from the passage of the contested decision summarised in paragraph 67 above that the ECB relied, in essence, on two considerations when it found that the amounts that the applicant was required to transfer to the CDC posed a risk of fire sales of assets: first, the fact that those savings are particularly liquid and, second, the experience of the recent banking crises.

106 In the first place, it must be observed that, according to the case-law cited in paragraph 99 above, the ECB was required to examine carefully and impartially all the relevant aspects of the individual case. Further, for the reasons set out in paragraphs 66 and 69 above, the ECB was required, in order to comply with paragraph 81 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), to carry out a thorough analysis of the characteristics of regulated savings.

107 It must be observed in that regard, first, that the contested decision does not mention one essential characteristic of regulated savings, highlighted by the applicant, namely the fact that they are a 'safe investment' in the event of a banking crisis.

108 That 'safe investment' status is demonstrated to the required legal standard by the evidence tendered by the applicant and has in fact not been disputed by the applicant in its pleadings.

109 The applicant recalls that the Cour des comptes (Court of Auditors, Paris, France) emphasised in its 2010 annual public report that 'the financial crisis [had] demonstrated that [Livret A] was attractive to depositors who tended to be more cautious in their investments'. Similarly, the *Le Monde* newspaper of 19 February 2009 stated that 'net Livret A deposits [had] reached EUR 18.7 billion in 2008, a historic high nearly three times above the previous record, taking outstanding deposits to EUR 139.2 billion at the end of December [2008], according to figures published … by the Banque de France', and that 'Livret A [had] benefited from its status as a safe investment since the start of the financial crisis, and from a high rate of return of 4% between 1 August 2008 and 1 February 2009'.

110 That shows that, in a banking crisis, rather than declining as a result of withdrawals by French savers, the volumes invested in regulated savings tend to increase as those savers, at that time, favour that type of investment.

111 Second, the applicant likewise correctly states, in essence, that regulated savings are unlikely to contribute to creating excessive leverage.

112 As the Court emphasised in paragraph 41 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), it is apparent from recital 90 of Regulation No 575/2013 and from the definitions in Article 4(1)(93) to (94) of that regulation that excessive leverage refers to a situation in which a credit institution finances too great a proportion of its investments by debt rather than from its own funds. The risk is then that the credit institution does not have sufficient own funds to meet requests for repayment of its debts and must sell some of its assets as a matter of emergency. The negative consequences of that emergency reduction of the leverage level during the financial crisis were explained as follows in recital 90 of Regulation No 575/2013:

'This amplified downward pressures on asset prices, causing further losses for institutions which in turn led to further declines in their own funds. The ultimate results of this negative spiral were a reduction in the availability of credit to the real economy and a deeper and longer crisis.'

113 However, unlike deposits that are freely at the disposal of credit institutions – which may be invested in any way, including in high-risk or illiquid assets, capable of contributing to the creation of excessive leverage – the present case concerns funds that the applicant is required to transfer to the CDC and which therefore cannot be invested in high-risk or illiquid assets.

114 Third and lastly, it must be observed that, unlike ordinary deposits under Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149), under which the only protection envisaged for depositors is through a fund financed by credit institutions, the sums that credit institutions are required to transfer to the CDC benefit from a dual guarantee by the French State. Indeed, Article 120-I of loi No 2008-1443 de finances rectificative pour 2008 (Amending Finance Law No 2008-1443 for 2008) of 30 December 2008 (JORF of 31 December 2008, p. 20518), to which Article L.221-7-V of the CMF refers, establishes a State guarantee against any default by the CDC not only for the benefit of depositors but also for the benefit of credit institutions.

115 In the second place, in the light of the factors set out in paragraphs 107 to 114 above, the explanation based on the claim that regulated savings are particularly liquid cannot be found, in itself, to demonstrate that the ECB's finding that regulated savings pose a risk of fire sales of assets is well founded.

116 Although that liquidity may indeed encourage savers to make withdrawals from those savings, it can also be seen from the evidence provided by the applicant that it also contributes to their 'safe investment' status in crisis situations. That liquidity in fact contributes to providing savers with an instrument that is both liquid – enabling them to make payments and withdrawals as with a current account – and very safe, as stated in the annual report of the observatoire de l'épargne réglementée (Regulated Savings Observatory [of the Banque de France]) according to which 'in 2011, at a time of rising uncertainty and volatility in the financial markets, the traditional safety offered by an investment guaranteed by the State, which is completely liquid and with a tax-free return, contributes to making it attractive'.

117 This means that the merits of that ground depend fundamentally on the ECB's claim based on the experience of the recent banking crises.

118 In that respect, in the third place, it must be observed that it is clear from the contested decision and the ECB's replies to the measures of organisation of procedure that the ECB relied on a single example when it found that 'the experience of the recent banking crises show[ed] that massive withdrawals occurred'. In response to questioning on two occasions pursuant to the measures of organisation of procedure, the ECB declined, for reasons of confidentiality, to reveal the identity of the credit institution to which it was referring. However, in its replies it set out the essential characteristics of the deposits from which massive withdrawals occurred. Those were sight deposits eligible for the depositor guarantee mechanism arising from transposition of Directive 2014/49.

119 If the example used by the ECB was to be relevant to the thorough analysis of the characteristics of regulated savings which it was required to carry out, it needed to involve deposits with characteristics sufficiently close to those of regulated savings deposits.

120 In the light of the information provided by the ECB, the Court does not consider that it did.

121 It must be observed that, from the perspective of their contribution to creating excessive leverage, the fact that the ECB mentions that the deposits at issue were sight deposits implies that the credit institution concerned could use those deposits freely, including in high risk or illiquid assets. In that respect, that example differs from the deposits that the applicant is required to transfer to the CDC, at issue in the present case, for the reasons set out in paragraphs 111 to 113 above.

122 It must also be observed that there is a second difference between the example relied upon by the ECB and regulated savings, which relates to depositors' perception of the safety of their deposits and, therefore, the potential for a massive and sudden withdrawal of those deposits in the event of a crisis. For the reasons set out in paragraph 114 above, the mere fact that the system arising from transposition of Directive 2014/49 applied cannot be regarded as giving rise to characteristics sufficiently close to those of regulated savings which are, as stated in paragraphs 107 to 110 above, perceived as a 'safe investment' in the event of a crisis.

123 Under those circumstances, it must be held that the applicant correctly criticises the ECB for failing to discharge its obligations resulting from the case-law summarised in paragraph 99 above by failing to take all the characteristics of regulated savings into account when assessing the risk of fire sales of assets. The first part of the third plea must therefore be upheld.

124 Furthermore, for the reasons set out in paragraph 69 above, it must be concluded that the ECB did not correctly comply with paragraph 81 of the judgment of 13 July 2018, *Crédit agricole* v *ECB* (T-758/16, EU:T:2018:472), according to which it was required to base its analysis on the characteristics of regulated savings. The applicant's reasoning in that respect in the third part of the first plea must, therefore, also be upheld.

125 The ground in point 2.2.2 of the contested decision is therefore vitiated by illegality.

126 Having regard to the methodology used by the ECB it should be found that the grounds in points 2.2.1 and 2.2.3 of the contested decision – concerning the creditworthiness of central government and the level of concentration of exposures to the CDC respectively, assuming they are not unlawful, do not amount to grounds for the refusal issued to the applicant. On the basis of that methodology, had those grounds alone been taken into consideration the ECB would not have refused to grant the applicant the full benefit of the derogation under Article 429(14) of Regulation No 575/2013.

127 That action should therefore be upheld and the contested decision annulled to the extent that the ECB refused to authorise the applicant to exclude 34% of its exposures to the CDC from calculation of its leverage ratio, and it is not necessary to examine the arguments submitted by the applicant in relation to any grounds other than those in point 2.2.2 of the contested decision.

Costs

128 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. As the ECB has been unsuccessful it must be ordered to bear the costs, as applied for in the applicant's pleadings.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Annuls decision ECB-SSM-2019-FRCAG-39 of the European Central Bank (ECB) of 3 May 2019, in so far as it refused to authorise Crédit lyonnais to exclude from the calculation of its leverage ratio 34% of its exposures to the Caisse des dépôts et consignations;**

2. **Orders the ECB to pay the costs.**

Tomljenović	Schalin	Nõmm

Delivered in open court in Luxembourg on 14 April 2021.

[Signatures]