Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 February 2024*

(Appeal – Economic and monetary policy – Prudential supervision of credit institutions – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the European Central Bank (ECB) – Withdrawal of authorisation – Action for annulment – Inadmissibility – Representation of a party – Authority to act granted to the lawyer – Representative not lawfully provided with authority to act)

In Case C-256/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 12 April 2022,

Pilatus Bank plc, established in Ta'Xbiex (Malta), represented by O. Behrends, Rechtsanwalt,

appellant,

the other parties to the proceedings being:

Pilatus Holding ltd.,

applicant at first instance,

European Central Bank (ECB), represented by M. Puidokas and E. Yoo, acting as Agents,

defendant at first instance,

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

intervener at first instance,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, F. Biltgen, N. Wahl (Rapporteur), J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

* Language of the case: English.

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 25 May 2023,

gives the following

Judgment

1 By its appeal, Pilatus Bank plc asks the Court of Justice to set aside the judgment of the General Court of the European Union of 2 February 2022, *Pilatus Bank and Pilatus Holding* v *ECB* (T-27/19, 'the judgment under appeal', EU:T:2022:46), by which the General Court dismissed the action for annulment of the decision of the European Central Bank (ECB) of 2 November 2018 withdrawing Pilatus Bank's authorisation to take up the business of a credit institution ('the decision at issue').

Legal context

2 Article 4 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) defines the tasks conferred on the ECB and provides, in paragraph 1(a) thereof:

'Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

(a) to authorise credit institutions and to withdraw authorisations of credit institutions subject to Article 14'.

3 Article 6 of that regulation, entitled 'Cooperation within the [Single Supervisory Mechanism (SSM)]', states:

'1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. The ECB shall be responsible for the effective and consistent functioning of the SSM.

…

4. In relation to the tasks defined in Article 4 except for points (a) and (c) of paragraph 1 thereof, the ECB shall have the responsibilities set out in paragraph 5 of this Article and the national competent authorities shall have the responsibilities set out in paragraph 6 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article, for the supervision of the following credit institutions, financial holding companies or mixed financial holding companies, or branches, which are established in participating Member States, of credit institutions established in non-participating Member States:

– those that are less significant on a consolidated basis, at the highest level of consolidation within the participating Member States, or individually in the specific case of branches, which are established in participating Member States, of credit institutions established in

non-participating Member States. The significance shall be assessed based on the following criteria:

(i) size;
(ii) importance for the economy of the Union or any participating Member State;
(iii) significance of cross-border activities.

With respect to the first subparagraph above, a credit institution or financial holding company or mixed financial holding company shall not be considered less significant, unless justified by particular circumstances to be specified in the methodology, if any of the following conditions is met:

(i) the total value of its assets exceeds EUR 30 billion;
(ii) the ratio of its total assets over the [gross domestic product (GDP)] of the participating Member State of establishment exceeds 20%, unless the total value of its assets is below EUR 5 billion;
(iii) following a notification by its national competent authority that it considers such an institution of significant relevance with regard to the domestic economy, the ECB takes a decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.

The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities subject to the conditions laid down in the methodology.

Those for which public financial assistance has been requested or received directly from the [European Financial Stability Facility (EFSF)] or the [European Stability Mechanism (ESM)] shall not be considered less significant.

Notwithstanding the previous subparagraphs, the ECB shall carry out the tasks conferred on it by this Regulation in respect of the three most significant credit institutions in each of the participating Member States, unless justified by particular circumstances.

…

6. Without prejudice to paragraph 5 of this Article, national competent authorities shall carry out and be responsible for the tasks referred to in points (b), (d) to (g) and (i) of Article 4(1) and adopting all relevant supervisory decisions with regard to the credit institutions referred to in the first subparagraph of paragraph 4 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article.

Without prejudice to Articles 10 to 13, the national competent authorities and national designated authorities shall maintain the powers, in accordance with national law, to obtain information from credit institutions, holding companies, mixed holding companies and undertakings included in the consolidated financial situation of a credit institution and to perform on site inspections at those credit institutions, holding companies, mixed holding companies and undertakings. The national competent authorities shall inform the ECB, in accordance with the framework set out in

paragraph 7 of this Article, of the measures taken pursuant to this paragraph and closely coordinate those measures with the ECB.

The national competent authorities shall report to the ECB on a regular basis on the performance of the activities performed under this Article.

…’

4 Article 14 of Regulation No 1024/2013, entitled ‘Authorisation’, provides, in paragraph 5 thereof:

‘Subject to paragraph 6, the ECB may withdraw the authorisation in the cases set out in relevant Union law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from such national competent authority. These consultations shall in particular ensure that before taking decisions regarding withdrawal, the ECB allows sufficient time for the national authorities to decide on the necessary remedial actions, including possible resolution measures, and takes these into account.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the relevant national law, it shall submit a proposal to the ECB to that end. In that case, the ECB shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.’

Background to the dispute

5 The appellant, Pilatus Bank, and Pilatus Holding ltd., which was the second applicant before the General Court, are, respectively, a ‘less significant’ credit institution, within the meaning of Article 6(4) of Regulation No 1024/2013, established in Malta and subject to direct prudential supervision by the Malta Financial Services Authority (‘the MFSA’), ‘the national competent authority’, within the meaning of Article 2(2) of that regulation, and the direct majority shareholder of that credit institution.

6 Mr Ali Sadr Hasheminejad, a shareholder of the appellant who indirectly holds 100% of its capital and voting rights, was arrested in the United States on six charges relating to his alleged participation in a scheme in which approximately 115 million United States dollars (USD) (approximately EUR 108 million) in payments to finance a real estate project in Venezuela were embezzled for the benefit of Iranian individuals and undertakings.

7 Following Mr Sadr Hasheminejad’s indictment in the United States, the appellant inter alia received withdrawal requests totalling EUR 51.4 million worth of deposits, that is approximately 40% of the deposits on its balance sheet.

8 In that context, the MFSA adopted three directives concerning the appellant.

9 On 21 March 2018, the MFSA adopted a directive regarding the removal or suspension of voting rights by which it ordered, inter alia, that Mr Sadr Hasheminejad be removed from his post as director of the appellant with immediate effect and from all other decision-making roles within it, that the exercise of his voting rights be suspended and that he refrain from any legal or judicial representation of the appellant.

10 On the same day, the MFSA also adopted a directive with regard to the moratorium, by which it ordered the appellant not to authorise any banking transaction, in particular withdrawals and deposits of its shareholders and members of its Board of Directors.

11 On 22 March 2018, the MFSA adopted a directive appointing a competent person with authority, under the terms of that appointment, to 'assume all the powers, functions and duties of the Bank in respect of all assets, whether exercisable by the Bank in general meeting or by the Board of Directors or by any other person, including the legal and judicial representation of the Bank to the exclusion of the Bank and any other person' ('the competent person').

12 On 29 June 2018, the MFSA proposed that the ECB withdraw the appellant's authorisation to take up the business of a credit institution in accordance with Article 14(5) of Regulation No 1024/2013.

13 On 2 August 2018, the MFSA submitted a revised proposal to the ECB to withdraw the appellant's authorisation to take up the business of a credit institution.

14 During the administrative procedure for withdrawal of authorisation, the appellant's Board of Directors gave authority to act to a lawyer, who established contact with the ECB.

15 By letter of 31 August 2018, the ECB invited the appellant to provide comments on the revised draft decision withdrawing authorisation within five working days from the date of receipt of that letter.

16 After obtaining two extensions of that hearing period and access to the file relating to the administrative procedure, the appellant, through the lawyer provided with authority to act by its Board of Directors, sent its comments on the draft decision withdrawing authorisation on 21 September 2018, in which it expressed the opposition of its management and shareholders to that draft decision.

17 On 2 November 2018, the ECB adopted the decision at issue pursuant to Article 4(1)(a) and Article 14(5) of Regulation No 1024/2013.

The action before the General Court and the judgment under appeal

18 By application lodged at the Registry of the General Court on 15 January 2019, Pilatus Bank and Pilatus Holding, through the lawyer provided with authority to act by the Board of Directors of Pilatus Bank and the director of Pilatus Holding, brought an action for annulment of the decision at issue.

19 By decision of 17 May 2019, the European Commission was granted leave to intervene in support of the form of order sought by the ECB.

20 In the judgment under appeal, the General Court dismissed the action brought against the decision at issue.

21 As regards, in the first place, admissibility, the General Court held that the action was inadmissible in so far as it had been brought by Pilatus Holding, since that entity was not, as a shareholder of the appellant, directly concerned by the decision at issue.

22 As regards, in the second place, the substance, the General Court rejected the 11 pleas in law raised by the appellant.

The procedure before the Court of Justice and the forms of order sought

23 By document lodged at the Registry of the Court of Justice on 12 April 2022, the appellant, through the same lawyer as at first instance, brought the present appeal.

24 By its appeal, it claims that the Court should:

– set aside the judgment under appeal;

– declare the decision at issue void pursuant to Article 264 TFEU;

– refer the case back to the General Court for it to rule on the action for annulment as far as the Court of Justice is not able to take a decision on the merits; and

– order the ECB to pay the costs of the appeal proceedings and of the proceedings before the General Court.

25 The ECB contends that the Court should:

– dismiss the appeal as inadmissible in part and unfounded in part;

– in the alternative, dismiss the appeal as unfounded in its entirety; and

– in any event, order the appellant to pay all the costs.

26 The Commission contends that the Court should:

– dismiss the appeal as unfounded; and

– order the appellant to pay the costs of the proceedings.

The request to have the oral part of the procedure reopened

27 By document lodged at the Court Registry on 27 June 2023, the ECB requested the Court to order the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

28 In support of its request, the ECB states that it wishes to submit new facts which, in the light of recent events, namely the Advocate General's Opinion of 25 May 2023, are of such a nature as to be a decisive factor for the decision of the Court. According to the ECB, it is apparent from the Opinion that the Advocate General considers that the directives concerning the appellant adopted by the MFSA in March 2018 are 'preparatory acts' in the composite administrative proceedings that led to the adoption by the ECB of the decision to withdraw authorisation and that the procedural deficiencies vitiating those directives are, therefore, attributable to the ECB and 'contaminate' the decision to withdraw authorisation adopted by the ECB. The ECB submits facts in order to show that those directives have been challenged before the Maltese courts.

29 In that regard, it must be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court make no provision for the interested parties referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion (judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 40 and the case-law cited).

30 Second, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. It is not therefore an opinion addressed to the judges or to the parties which stems from an authority outside the Court, but rather, it is the individual reasoned opinion, expressed in open court, of a Member of the Court of Justice itself. In those circumstances, the Advocate General's Opinion cannot be debated by the parties. Moreover, the Court is not bound either by the Advocate General's submissions or by the reasoning which led to those submissions. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 41 and the case-law cited).

31 Nevertheless, in accordance with Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the opening or reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court.

32 However, in the present case, the Court considers that it has all the information necessary to give a ruling and that the evidence put forward by the ECB in support of its request that the oral part of the procedure be reopened does not constitute new facts of such a nature as to be a decisive factor for the decision of the Court which it is thus called upon to give.

33 In those circumstances, the Court considers, after hearing the Advocate General, that there is no need to order the reopening of the oral part of the procedure.

The appeal

34 It should be noted at the outset that, according to settled case-law, any fact which relates to the admissibility of the action for annulment brought before the General Court is likely to constitute a question of public policy which the Court of Justice, hearing an appeal, is required to raise of its own motion (judgments of 23 April 2009, *Sahlstedt and Others* v *Commission*, C-362/06 P, EU:C:2009:243, paragraphs 21 to 23, and of 6 July 2023, *Julien* v *Council*, C-285/22 P, EU:C:2023:551, paragraph 45 and the case-law cited).

35 Under Article 19 of the Statute of the Court of Justice of the European Union, which applies to the General Court pursuant to the first paragraph of Article 53 of that statute, in order to be able to bring proceedings before the Courts of the European Union, legal persons, such as the appellant, must be represented by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3).

36 Thus, the representation of a legal person by a lawyer and, in particular, the question of the lawfulness of the authority granted to a lawyer for the purpose of bringing an action before the General Court are among the considerations of public policy which the Court of Justice, hearing an appeal, is required to raise of its own motion.

37 As regards the authority to act conferred on a lawyer by such persons, Article 51(3) of the Rules of Procedure of the General Court provides that where the party represented by the lawyer is a legal person governed by private law, the lawyer must lodge at the Registry an authority to act given by that person. Unlike the version of those rules which applied before 1 July 2015, that provision does not require such a person to provide proof that the authority granted to its lawyer was conferred on him or her lawfully by someone authorised for the purpose.

38 However, the Court of Justice has already held that the fact that Article 51(3) does not lay down that obligation does not mean that the General Court need not verify whether the authority concerned is lawful where such authority is challenged. The fact that, at the stage of lodging its action, an applicant does not have to provide that proof does not affect the obligation on that party lawfully to have provided its lawyer with authority to act in order to be able to bring proceedings. The fact that the evidence requirements at the time of lodging an action have been relaxed has no bearing on the substantive condition that the parties must be duly represented by their lawyers. Accordingly, where the lawfulness of an authority granted by a party to its lawyer is challenged, that party must demonstrate that that authority is lawful (judgment of 21 September 2023, *China Chamber of Commerce for Import and Export of Machinery and Electronic Products and Others* v *Commission*, C-478/21 P, EU:C:2023:685, paragraph 93 and the case-law cited).

39 The General Court is also required to verify of its own motion that the authority to act in question is lawful and, in particular, that the authority to act has been conferred lawfully by a representative of the legal person in question who has the power to do so where such an authority to act is manifestly unlawful or where there are factors liable to cast serious doubt on the lawfulness of such an authority to act.

40 In the present case, a number of circumstances should have led the General Court to have serious doubts as to the lawfulness of the authority to act given to the appellant's lawyer.

41 Thus, first, the factual circumstances that led to the action being brought before the General Court and the terms of the authority to act as a representative given by the appellant's Board of Directors to the lawyer who brought that action were liable seriously to call into question the lawfulness of that authority to act.

42 The appointment of the competent person by the MFSA and the fact that that competent person's function was, inter alia, to assume 'the legal and judicial representation of the Bank to the exclusion of the Bank and any other person' were such as to give rise to serious doubts as to the capacity of the appellant's Board of Directors to commit the appellant to legal proceedings and to provide a lawyer with authority to act for that purpose.

43 The terms of the authority to act as a representative given to the lawyer were also liable to accentuate such doubts. Thus, the members of the appellant's Board of Directors recalled, in that authority to act, that the MFSA had appointed the competent person on 22 March 2018 and that it had conferred certain powers on that person, stating: 'Which persons are authorised to represent [the appellant] in the relevant context will have to be determined by the competent courts. The

members of the [Board of Directors] do not assume any personal liability'. Those statements indicate that the signatories of the authority to act themselves had doubts as to their capacity to issue such an authority to act and constitute a clear and explicit invitation to verify that they actually had that capacity.

44 Second, although the purpose of the action before the General Court was to annul the decision withdrawing authorisation, certain arguments put forward by the appellant in support of that action and, in particular, those put forward in support of the tenth plea in law concerned the representation of the appellant and sought to demonstrate that the ECB had deprived it of the possibility of effective representation.

45 Such arguments were also liable to cast serious doubt on the lawfulness of the authority of the appellant's lawyer to act as a representative in the proceedings before the General Court. The fact that the fees of the appellant's lawyer could not be paid was such as to indicate that the body that had provided the lawyer with authority to act had no power to make that payment and that it did not have the power to bring legal proceedings and to provide a lawyer with authority to act for that purpose.

46 In those circumstances, irrespective of the merits of those arguments, the General Court had to require, of its own motion, proof that the lawyer representing the appellant had been lawfully provided with authority to act and that the authority to act had been conferred by someone authorised for that purpose.

47 It follows from the foregoing considerations that the General Court erred in law by failing to determine of its own motion whether the authority conferred by the appellant's Board of Directors on its lawyer was lawful.

48 Such a manifest error must result in the judgment under appeal being set aside, without there being any need to rule on the grounds of appeal put forward by the appellant.

49 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the Court sets aside the decision of the General Court, it may itself give final judgment in the matter, where the state of the proceedings so permits.

50 That is the position in the present case. Since the parties were invited by the Court to comment on the admissibility of the action before the General Court and, in particular, on the lawfulness of the authority to act as a representative issued by the appellant's Board of Directors, the Court has all the information necessary to rule on the admissibility of the action.

51 The appellant claimed, on the basis of the judgment of the Qorti tal-Appell (Kompetenza Inferjuri) (Court of Appeal (Inferior Jurisdiction), Malta) of 5 November 2018 in Case No 6/2017 (*Heikki Niemelä and Others* v *Maltese Financial Services Authority*), that, despite the appointment of the competent person, its Board of Directors still had the power to represent it in legal proceedings and, to that end, to provide a lawyer with authority to act.

52 Thus, according to the appellant, the only effect of appointing the competent person was to entrust the bank's assets and the management of the bank's business to that person, without, however, granting him the capacity to represent that bank in judicial proceedings challenging decisions that are binding on the bank. In that regard, it is irrelevant that such decisions might also affect the assets and business that are managed by the competent person.

53 The appellant also emphasised that the judgment of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others* (C-663/17 P, C-665/17 P and C-669/17 P, 'the judgment in *Trasta Komercbanka*', EU:C:2019:923), and the Opinion of the Advocate General relating to that judgment confirm that the issue of representation is determined primarily by national law and that the General Court's finding in that regard is binding unless a party demonstrates that it constitutes a distortion of the facts. Under Maltese law, the representation of the bank does not fall within the remit of the competent person even if that person is in charge of the bank's business or its assets.

54 The ECB stated that the representation of a corporate legal person is governed by the *lex incorporationis* and that, in the present case, Maltese law, as interpreted by the judgment of the Qorti tal-Appell (Kompetenza Inferjuri) (Court of Appeal (Inferior Jurisdiction)) of 5 November 2018 in Case No 6/2017 (*Heikki Niemelä and Others* v *Maltese Financial Services Authority*), limits the competent person's power to represent the appellant to the specific circumstances referred to in the national law on the basis of which the competent person was appointed, in particular as regards matters concerning the assets and exercising control of the business, and, therefore, the Board of Directors maintains residual rights.

55 It also observed that the authority to act issued by the appellant's Board of Directors covered only the representation in regulatory matters without explicitly mentioning judicial representation.

56 In that regard, as the Court has already noted in paragraph 35 of the present judgment, under Article 19 of the Statute of the Court of Justice of the European Union, which applies to the General Court pursuant to the first paragraph of Article 53 of that statute, in order to be able to bring proceedings before the Courts of the European Union, legal persons, such as the appellant, must be represented by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area.

57 In view of that need for legal persons to be represented by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area, the admissibility of an action for annulment brought by such a person under Article 263 TFEU is subject to proof that the person concerned has indeed made the decision to bring the action and that the lawyers who claim to represent that person have in fact been authorised to do so (see, to that effect, judgment in *Trasta Komercbanka*, paragraph 57 and the case-law cited).

58 It is precisely in order to ensure that that is indeed the case that Article 51(3) of the Rules of Procedure of the General Court requires lawyers, where the party they represent is a legal person governed by private law, to lodge at the Registry of the General Court an authority to act given by that person, as failure to produce that authority to act may entail, in accordance with Article 51(4) of those rules, the formal inadmissibility of the application (judgment in *Trasta Komercbanka*, paragraph 57).

59 In the case of a credit institution constituted in the form of a legal person governed by the law of a Member State, such as the appellant, where there are no EU rules in the matter, it is under that law that it is necessary to determine which bodies of that legal person are entitled to take the decisions referred to in paragraphs 57 and 58 of the present judgment (judgment in *Trasta Komercbanka*, paragraph 58).

60 In the present case, it must be held that, having regard to the authority to act granted to the competent person and, in particular, to the fact that it was for that person to 'assume all the powers, functions and duties of the Bank in respect of all assets, whether exercisable by the Bank in general meeting or by the Board of Directors or by any other person, including the legal and judicial representation of the Bank to the exclusion of the Bank and any other person', the appellant's Board of Directors was no longer entitled to represent the appellant and no longer had the power to provide a lawyer with authority to act for that purpose.

61 The power of the appellant's Board of Directors to represent it in legal proceedings and to provide a lawyer with authority to act for that purpose cannot, moreover, be based on the judgment in *Trasta Komercbanka*.

62 That judgment concerns the obligation of a Court of the European Union not to take account of the revocation of the authority conferred on a party's representative where that revocation infringes that party's right to effective judicial protection. However, such an obligation is incumbent on a Court of the European Union only in certain defined circumstances.

63 As is apparent from paragraphs 60 to 62 of the judgment in *Trasta Komercbanka*, the Court held that the right of the credit institution Trasta Komercbanka to an effective remedy was infringed on account of the fact that the liquidator appointed after authorisation was withdrawn and after that institution was placed in liquidation had a conflict of interests. The Court noted that the liquidator, whose task was to carry out the final liquidation of that institution, had been appointed on a proposal from the national competent authority, which could at any time relieve the liquidator of its duties. It considered, consequently, that there was a risk that that liquidator might avoid challenging, in court proceedings, the decision to withdraw that institution's authorisation, which had been adopted by the ECB on a proposal from that authority and which had led to that institution being placed in liquidation. The Court concluded, in paragraph 78 of that judgment, that the revocation, by the liquidator, of the authority to act conferred by the former decision-making bodies of Trasta Komercbanka on the lawyer who had brought an action against that decision infringed that institution's right to effective judicial protection and that, in taking that revocation into account, the General Court had erred in law.

64 In the present case, the authority to act of the competent person appointed by the MFSA differs significantly from that of the liquidator as described in paragraph 72 of the judgment in *Trasta Komercbanka*, since the latter's sole purpose was to collect debts, sell assets and satisfy claims of creditors in order to bring about the total cessation of the activity of the credit institution concerned.

65 In addition, the appellant has not adduced any evidence relating to the competent person's authority to act or the conditions under which he exercises that authority indicating that that person had, in law or in fact, a conflict of interests. In particular, it in no way follows from the wording of that authority to act, referred to in paragraph 60 of the present judgment, that the competent person does not represent the interests of the bank.

66 Similarly, the fact that the competent person was appointed by the national competent authority that submitted to the ECB the proposal to withdraw authorisation is not sufficient, in itself, to establish the existence of a conflict of interests.

67 As regards the scope of the judgment referred to in paragraph 51 of the present judgment, it should be noted that it did not concern the appellant but another Maltese credit institution in respect of which the MFSA had appointed a competent person.

68 Moreover, the Qorti tal-Appell (Kompetenza Inferjuri) (Court of Appeal (Inferior Jurisdiction)) confirmed, in that judgment, that the directors of a credit institution are not divested of all their powers by virtue of the appointment of a competent person. They are, thus, still empowered to request, on behalf of the credit institution, the revocation of a number of prudential supervisory decisions issued by the MFSA as the national competent authority and, in particular, of the decision appointing a competent person.

69 However, it does not follow from that judgment that, where a competent person has been appointed and authority to act as a representative, in particular a judicial representative, has been conferred on that person, the directors of a credit institution retain the power to provide a lawyer with authority to act as a representative of that institution in proceedings concerning decisions adopted by the ECB or to challenge the decisions of that institution.

70 In addition, legal representation in connection with challenging a withdrawal of authorisation may fall within the remit of the competent person as it necessarily concerns the assets of the bank.

71 Last, it is irrelevant that the appellant is the addressee of the decision at issue.

72 That does not mean that, following the appointment of the competent person, the appellant's Board of Directors was still entitled to take the decision to bring an action before a Court of the European Union on behalf of the appellant and still had the power to provide a lawyer with authority to act for that purpose.

73 In the light of all the foregoing considerations, the action at first instance must be dismissed as inadmissible.

Costs

74 Under Article 184(2) of the Rules of Procedure of the Court, where an appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

75 Under Article 138(1) of those rules, applicable to the procedure on an appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

76 In the present case, since Pilatus Bank has been unsuccessful and the ECB has applied, both before the Court of Justice and before the General Court, for Pilatus Bank to be ordered to pay the costs, Pilatus Bank must be ordered to bear its own costs and to pay those incurred by the ECB in the proceedings at first instance and in the present appeal.

77 Under Article 140(1) of the Rules of Procedure of the Court, applicable to the procedure on appeal by virtue of Article 184(1) thereof, Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Commission, intervener at first instance, is to bear its own costs relating to the proceedings at first instance and to the appeal proceedings.

On those grounds, the Court (Second Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 2 February 2022, *Pilatus Bank and Pilatus Holding* v *ECB* (T-27/19, EU:T:2022:46);**

2. **Dismisses the action brought in Case T-27/19 as inadmissible;**

3. **Orders Pilatus Bank plc to bear its own costs and to pay those incurred by the European Central Bank (ECB) relating to the proceedings at first instance and to the appeal proceedings;**

4. **Orders the European Commission to bear its own costs relating to the proceedings at first instance and to the appeal proceedings.**

Prechal Biltgen Wahl

Passer Arastey Sahún

Delivered in open court in Luxembourg on 8 February 2024.

A. Calot Escobar
Registrar

A. Prechal
President of the Chamber