Action brought on 18 February 2022 — Sberbank Europe v ECB

(Case T-99/22)

(2022/C 191/37)

Language of the case: English

Parties

Applicant: Sberbank Europe AG (Vienna, Austria) (represented by: M. Fellner, lawyer)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the ECB's decision dated 21 December 2021 rendered against Sberbank (No ECB-SSM-2021-ATSBE-12, ESA-2020-00000051) without replacement pursuant to Article 263, 264 TFEU; and,

— order the defendant to pay the costs of the proceedings of annulment.

Pleas in law and main arguments

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

1. First plea in law, alleging that the ECB's imposition of absorption interest is an inadmissible double punishment pursuant to Article 50 of the Charter of the Fundamental Rights ('CFR') of the European Union and Article 4 of the European Convention of Human Rights ('ECHR').

2. Second plea in law, alleging that the ECB's decision dated 21 December 2021 violates Article 49 of the CFR and Article 7 of the ECHR by imposing a penalty exceeding the amount limits laid down in Article 18(1) of Regulation (EU) No 1024/2013 ([1]).

3. Third plea in law, alleging that ECB's decision imposing absorption interest on Sberbank violates Article 17 of the CFR and Article 1 of the First additional protocol to the ECHR.

4. Fourth plea in law alleging violation of fundamental rights and fundamental freedoms pursuant to Article 6 of the Treaty on European Union. The principle of res iudicata prohibits the ECB to impose absorption interest on Sberbank for exceeding the large exposure limits pursuant to Art 395 of Regulation (EU) No 575/2013 ([2]).

5. Fifth plea in law alleging violation of the principle of good faith, since the ECB violated the Guide to the method of setting administrative pecuniary penalties pursuant to Article 18(1) and (7) of Regulation (EU) No 1024/2013.

6. Sixth plea in law alleging that the defendant violated Article 6 of the ECHR.

7. Seventh plea in law alleging that the defendant violated the amount of limits for sanctions pursuant to Article 18(1) of Regulation (EU) No 1024/2013.

8. Eighth plea in law alleging violation of the principle of proportionality pursuant to Section 99(e) of the Austrian Banking Act ('BWG').

9. Ninth plea in law alleging that Article 97 of the BWG is not applicable if no advantage is gained or no loss is avoided.

10. Tenth plea in law alleging that the ECB's ability to impose absorption interest is time-barred pursuant to Article 130 of Regulation (EU) No 468/2014 ([3]) and Section 22 of the Austrian Financial Market Supervisory Authorities Act ('FMSA').

11. Eleventh plea in law alleging that Art 395(1) of Regulation (EU) No 575/2013 only stipulates one large exposure limit, which is why Section 97(1) No 2 BWG only sanctions the exceeding of this limit once.

12. Twelfth plea in law alleging that Sberbank did not intentionally exceed the large exposure limit.

13. Thirteenth plea in law alleging that Sberbank did not gain any advantage or avoid any loss to be absorbed.

14. Fourteenth plea in law alleging that by not granting the exemption under 396(1) of Regulation (EU) No 575/2013 the ECB has misused its discretion.

(1) 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).
(2) 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).
(3) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ 2014 L 141, p. 1).

Action brought on 22 February 2022 — ON v Commission

(Case T-103/22)

(2022/C 191/38)

Language of the case: Czech

Parties

Applicant: ON (represented by: D. Mimrová, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Delegated Regulation (EU) 2021/2288 of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series, (1) on the grounds that it infringes the principle of equal treatment, the prohibition on discrimination and the principle of proportionality;

— Annul Regulation 2021/2288 on the ground that it lacks a legal basis under Article 168 TFEU so far as concerns the protection of public health or the European Union's reaction to the cross-border health threat of the covid-19 pandemic;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed general principles of Community law and by adopting Regulation 2021/2288 infringed:

   — the principle of equal treatment and the prohibition on discrimination in restricting the validity of the digital certificate to 270 days from the date of completion of the primary vaccination series, in the interests of facilitating freedom of movement for holders of valid digital certificates (that is, persons who have had the booster vaccination, who supposedly have greater immunity against the Omicron variant of the virus), while it excluded from the scope of the contested measure an indeterminate circle of persons defined by their age, profession, lifestyle or other criteria (irrespective of whether they are vaccinated or not at all vaccinated), thereby discriminating against a large group of persons who have completed the primary vaccination series and have caught covid, even though according to the scientific evidence those individuals with so-called 'hybrid immunity' are of a comparable or lower risk to society from the point of view of the transfer of infection and burden on the health system than individuals whose unrestricted digital certificate remains valid or who are otherwise excluded from the scope of the contested measure and who are 'de jure' free of infection.