Press and Information

General Court of the European Union
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Judgments in Cases T-733/16
Banque Postale v ECB, T-745/16 BPCE v ECB, T-751/16 Confédération nationale du Crédit mutuel v ECB, T-757/16 Société générale v ECB, T-758/16 Crédit agricole v ECB and T-768/16 BNP Paribas v ECB

The General Court annuls the decisions of the ECB refusing to allow six French credit institutions to exclude from the calculation of the leverage ratio certain exposure connected to French savings accounts

The ECB has erred in law and committed manifest errors of assessment

The 2008 financial crisis has shown that certain credit institutions had financed too large a part of their investments by using debt rather than by own funds. That lack of sufficient own funds has led to some banks having to sell their assets as a matter of urgency, which has amplified the effects of the financial crisis.

In order to allow greater clarity in the levels of own funds of the credit institutions, the European legislature decided to introduce a new instrument to assess their levels, the leverage ratio. The specific feature of the ratio lies in the fact that it is not calculated on the basis of the level of risk of investments (exposure) of the credit institutions and that, in principle, it is intended to take account of all their investments in its calculation.

A derogation was, nonetheless, inserted into the regulation on prudential requirements for credit institutions.[1] That derogation permits the competent authorities, including the European Central Bank (ECB), to authorise credit institutions to exclude exposure which satisfies a number of conditions from the calculation of the leverage ratio.[2]

Six French credit institutions under the direct supervision of (T-733/16) have asked the ECB to exclude exposure consisting of sums in a number of savings accounts taken out with them (livret A (savings account A), livret de développement durable et solidaire (LDD; sustainable and inclusive development account) and livret d'épargne populaire (LEP; public savings account)) and transferred to the Caisse des dépôts et consignations (CDC), a French public investment group, from calculation of the leverage ratio.

By decisions of 24 August 2016, the ECB refused to exclude exposure to the CDC consisting of part of the sums deposited in the three livrets referred to above [3] from calculation of the leverage ratio. The ECB gave reasons for its refusal, namely that, although the conditions laid down by the regulation were satisfied, it had discretion to authorise or refuse the exclusion requested. In the exercise of that discretion, the ECB was of the view that the mechanism for transfer from the CDC to the credit institutions concerned was imperfect and gave rise to prudential concerns justifying the rejection of those institutions' requests. The six credit institutions therefore brought proceedings before the General Court seeking the annulment of the ECB's refusal decisions.

[1] 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, and corrigenda OJ 2013 L 208, p. 68, and OJ 2013 L 321, p. 6).
[2] The exposure must (a) concern a public sector entity; (b) be dealt with in accordance with the prudential requirements relating to exposure on public sector entities, and (c) be the result of deposits which the institution is legally bound to transfer to the public sector entity referred to in point (a) in order to finance investments in the public interest.
[3] In the case of the Banque postale, however, the ECB has authorised such an exclusion, temporarily and degressively, between 2016 and 2023, in respect of part of the exposure concerned to take account of the significant impact of its refusal for that credit institution.

By today's judgments, the General Court annuls the ECB's decisions.

The Court confirms first of all that, where the conditions for granting the exclusion are satisfied, the ECB has discretion to grant that exclusion or not. The existence of that discretion is clear from the wording of the regulation and is explained by the need to enable the ECB to make choices, in the light of the particular features of each case, between, on the one hand, the objective of following the logic of the leverage ratio (which means taking into account the extent of the total exposure of a credit institution, without risk weighting) and, on the other, the objective of treating certain exposure with a particularly low risk profile and which does not arise from an investment choice of the credit institution concerned as irrelevant to the calculation of the leverage ratio and able to be excluded from that calculation.

Next, the Court ascertains whether the ECB has not erred in law or committed any manifest error of assessment in the exercise of its discretion. In that regard, the Court notes that the ECB gave reasons for its refusal based on considerations inherent to the exposure to which the derogation provided for in the regulation relates, thus depriving that derogation of useful effect. The ECB justified its refusal by stating that the exposure to the CDC appears as an asset in the balance sheet of the institutions concerned (whereas the exposure to which the derogation relates is, by its nature, intended to appear as an asset in the balance sheet), that those institutions bear the operational risk connected with regulated savings (whereas it is inherent to the logic of the derogation that that risk be borne by the credit institutions) and that any default by the French State could have the consequence that the sums transferred to the CDC are not returned to the applicants (whereas only exposure to a State is covered by that derogation and the ECB has not analysed the probability of such a default on payment).

The General Court also considers that, to the extent that the risks associated with a situation of excessive leverage occur in a case of insufficient liquidity, the ECB's principled position that the period of adjustment (that is to say, the period between the adjustments of the respective positions of the institutions concerned and of the CDC) could facilitate the emergence of risks associated with an excessive leverage, while the ECB admits that that period of adjustment does not constitute a liquidity risk, must, by its general nature and having regard to the lack of detailed examination of the characteristics of regulation savings, be regarded as manifestly incorrect.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments (T-733/16, T-745/16, T-751/16, T-757/16, T-758/16 and T-768/16) is published on the CURIA website on the day of delivery

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