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Judgment of the General Court in Case T-797/19 | *Anglo Austrian AAB and Belegging-Maatschappij "Far-East"* v *ECB*

The General Court confirms the withdrawal of AAB Bank's authorisation as a credit institution

That withdrawal by the ECB is justified inter alia by AAB Bank's serious breaches of the rules on anti-money laundering and countering the financing of terrorism

Since 2010, the Österreichische Finanzmarktbehörde (Austrian financial markets supervisory authority; 'the FMA') has adopted a large number of injunctions and sanctions against AAB Bank, a credit institution established in Austria. On that basis, in 2019, the FMA submitted to the European Central Bank (ECB) a draft decision to withdraw AAB Bank's authorisation to access the activities of a credit institution. By its decision, [1] the ECB withdrew that authorisation. In essence, it considered that, based on the FMA's findings, made in the context of carrying out its task of prudential supervision and in relation to AAB Bank's continued and repeated non-compliance with the requirements on anti-money laundering and countering the financing of terrorism and internal governance, that institution was not able to ensure a sound management of its risks.

The action seeking annulment of that decision of the ECB is dismissed by the Ninth Chamber (Extended Composition) of the General Court. In its judgment, the Court rules, for the first time, on a withdrawal of authorisation of a banking institution on account of serious breaches of the legislation on anti-money laundering and countering the financing of terrorism and infringements of the rules on the governance of credit institutions.

Assessment of the General Court

First of all, the Court finds that, in the present case, the criteria justifying the withdrawal of authorisation provided for in Directive 2013/36 [2] and transposed into national law were fulfilled.

First, on the ECB's finding that AAB Bank was found liable for serious breaches of the national provisions on anti-money laundering and countering the financing of terrorism adopted pursuant to Directive 2005/60, [3] [4] the Court holds that the ECB committed no manifest error of assessment.

As a preliminary point, the Court observes that, in exercising its competence relating to the withdrawal of authorisations of credit institutions, the ECB is obliged to apply, inter alia, the national law provisions transposing

[1] Decision ECB-SSM-2019-AT 8 WHD-2019 0009 of 14 November 2019.

[2] 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 (OJ 2013 L 176, p. 338).

[3] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ 2005 L 309, p. 15).

[4] Criterion resulting in the revocation of authorisation, referred to in Article 67(1)(o) of Directive 2013/36.

Directive 2013/36.

In the present case, it notes that, in taking into account inter alia the decisions of the FMA and the judgments of the Austrian courts, the ECB considered that AAB Bank had infringed, for several years, the national provisions transposing Directive 2013/36. It did not have an appropriate procedure for managing risks for the purposes of preventing money laundering and had been found liable for serious, repeated or systematic breaches of the national legislation on anti-money laundering and countering the financing of terrorism.

The Court considers that, in view of the importance of combating money laundering and terrorist financing, a credit institution may be found liable for serious breaches on the basis of administrative decisions adopted by a competent national authority, sufficient, in themselves, to justify a withdrawal of its authorisation. The fact that the breaches are old or have been corrected has no bearing on the incurrence of such liability. The relevant national law does not impose a time limit to be observed for taking into account earlier decisions establishing liability. Nor does it require that serious breaches be interrupted or still exist when the decision to withdraw authorisation is adopted, especially since, in this case, the breaches were found only a few years before the adoption of the contested decision. Regarding AAB Bank's position that the breaches had been corrected and, consequently, could no longer justify such a withdrawal of authorisation, the Court states that such an approach would call into question the objective of safeguarding the European banking system since it would permit credit institutions that have committed serious breaches to continue their activities as long as the competent authorities do not demonstrate again that they have committed new breaches. In addition, a credit institution found liable for serious breaches by a decision which has become final cannot invoke any time-barring of such breaches.

The Court also rejects the arguments of AAB aimed at disputing the seriousness of the breaches found.

In that regard, it emphasises, in particular, that the seriousness of the breaches cannot be challenged at the stage of the administrative procedure before the ECB given that, in the decisions preceding the FMA's proposal of withdrawal, which became final on the date of the contested decision, the competent authorities deemed AAB Bank liable for the said breaches. Moreover, in the light of the objective of safeguarding the European banking market, the ECB cannot be criticised for having found that systematic, serious and continuous breaches of the national legislation on anti-money laundering and countering the financing of terrorism had to be classified as serious breaches justifying a withdrawal of authorisation.

Second, the Court endorses the position of the ECB according to which AAB Bank failed to implement the governance arrangements required by the competent authorities in accordance with the national provisions transposing Directive 2013/36. [5] In that context, it rejects the arguments of AAB Bank according to which, at the date of the contested decision, it was not in breach of the legislation on governance arrangements. It notes that the interpretation according to which past breaches or breaches which have been mitigated cannot justify a withdrawal of authorisation is apparent neither from Directive 2013/36 nor from the relevant national law.

Next, the Court concludes that, in refusing to suspend the application of the contested decision, the ECB committed no error. It observes inter alia that the latter's refusal to suspend the immediate application of that decision did not prevent AAB Bank from bringing an action for annulment and making an application for interim measures. In addition, the President of the General Court ordered the suspension of operation of the contested decision six days after its adoption, the time for a decision on the application for interim measures to be taken. Thus, no infringement of the right to effective legal protection could be found.

Subsequently, the Court rules that the contested decision was adopted in due observance of the rights of the defence of AAB Bank. In that context, it states that AAB Bank was properly heard during the adoption of the contested decision. The latter was given the opportunity to submit its observations on the draft of that decision. By contrast, the ECB was not obliged to send AAB Bank the FMA's draft decision and thus allow it to respond to it.

[5] Criterion resulting in the revocation of authorisation, referred to in Article 67(1)(d) of Directive 2013/36.

Furthermore, the Court finds that, in the present case, the ECB did not fail to determine, examine and assess carefully and impartially all the material elements relevant for the withdrawal of the authorisation. Specifically, the ECB validly declared, following its own assessment, that it agreed with the FMA's determinations on the commission of breaches by AAB Bank, confirmed both by the FMA's administrative decisions and by the decisions of the national courts. At the end of its own assessment, the ECB classified the facts at issue as establishing that AAB Bank had been found liable for a serious breach of the national legislation on anti-money laundering and countering the financing of terrorism. Likewise, it did not merely reproduce the findings made by the FMA regarding AAB Bank's failure to implement the necessary governance arrangements. On the contrary, the ECB relied on its own assessment of compliance with the national provisions relevant in that regard.

Last, the Court rejects AAB Bank's plea according to which the contested decision destroyed the economic value of the shares that its shareholder held in its capital and undermined the essence of that shareholder's right to property. As AAB Bank is not the holder of that property right, it cannot rely on it in support of its action for annulment.

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.

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 and ten days of notification of the decision.

The full text of the judgment is published on the CURIA website on the day of delivery.

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