General Court of the European Union
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Press and Information

Judgments in Cases T-203/18 VQ v ECB, T-576/18 Crédit agricole v ECB, T-577/18 Crédit agricole Corporate and Investment Bank v ECB and T-578/18 CA Consumer Finance v ECB

The General Court delivers its first four judgments concerning decisions of the European Central Bank imposing pecuniary penalties as part of its prudential supervision of credit institutions

It annuls in part three decisions on the basis that inadequate reasons were given for those decisions

In Case **T-203/18 VQ v ECB**, VQ challenged the legality of a decision of the ECB in which the ECB found that VQ had negligently committed an infringement by repurchasing its own shares without having sought the prior permission of the competent authorities in breach of Article 77(a) of Regulation No 575/2013.[1] The ECB imposed on VQ an administrative pecuniary penalty of €1, 600,000 corresponding to 0.03% of its turnover, pursuant to Article 18(1) of Regulation No 1024/2013.[2]

VQ disputed that it had committed an infringement, the proportionality of imposing a pecuniary penalty, the rules governing publication of the penalty on the ECB's website and the proportionality of publishing the penalty.

In today's judgment, the Court rejects all of the pleas in law put forward by the applicant.

It finds, inter alia, that the ECB did not fail to comply with the principle of proportionality by imposing on the applicant an administrative pecuniary penalty given that there is no reasonable doubt as to the interpretation of Article 77(a) of Regulation No 575/2013.

Furthermore, the Court finds that the wording of the provision[3] of the SSM Framework Regulation, which provides for the possibility of an anonymised or postponed publication of penalties imposed by the ECB where 'disproportionate damage' would be caused to the entity concerned by non-anonymous publication, is to be interpreted as establishing, in principle, the publication of all decisions imposing an administrative pecuniary penalty which contain, inter alia, the identity of the entity concerned.

The Court concludes that the 'disproportionate' nature of the damage must be evaluated solely on the basis of an assessment of the consequences of a lack of anonymisation for the situation of that entity, without taking into account the degree of gravity of the breach which that entity is found to have committed. It finds that the applicant did not demonstrate that the publication of the penalty indicating its name caused it 'disproportionate damage' within the meaning of that provision.

In Cases **T-576/18, T-577/18 and T-578/18**, actions for annulment were brought by credit institutions belonging to the Crédit agricole group.

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[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, corrigenda OJ 2013 L 208, p. 68, and OJ 2013 L 321, p. 6).

[2] 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).

[3] Article 132(1) of 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', OJ 2014 L 141, p. 1).

In the three contested decisions, the ECB complained that the credit institutions had classified capital instruments as Common Equity Tier 1 ('CET 1') instruments without obtaining prior authorisation from the competent authorities in breach of Article 26(3) of Regulation No 575/2013, and found that the breaches had been committed negligently.

Crédit Agricole SA, applicant in Case T-576/18, received a pecuniary penalty of €4,300,000, representing 0.0015% of the annual turnover of the Crédit Agricole group, Crédit Agricole Corporate and Investment Bank, applicant in Case T-577/18, received a penalty of €300,000, representing approximately 0.001% of the group's annual turnover and CA Consumer Finance, applicant in Case T-578/18, received a penalty of €200,000.

The applicants challenged the legality of the contested decisions before the Court both in so far as it was found in those decisions that there had been a breach by the applicants and in so far as the decisions imposed on the applicants an administrative penalty.

In today's judgments, the Court finds that the applicants have not demonstrated that the ECB's decisions were unlawful in so far as it was found in those decisions that there had been a breach by the applicants.

In that regard, the Court points out that Article 26(3) of Regulation No 575/2013 must be interpreted as requiring a credit institution to obtain **the permission of the competent authorities before classifying its capital instruments as CET 1 instruments.** The Court also finds that the applicants were able to comprehend the meaning of that provision, with the result that the ECB was entitled to find that there had been negligence on their part.

Furthermore, the Court considers that, from the stage when it issued a statement of objections, the ECB had set out clearly its complaint against the three credit institutions, namely that they had classified certain capital instruments as CET 1 instruments without permission in breach of Regulation No 575/2013, and that, accordingly, their right to be heard in the administrative procedure had been observed.

However, **the Court has annulled the contested decisions in so far as they imposed pecuniary penalties of €4,300,000, €300,000 and €200,000, respectively, on the basis that inadequate reasons were given for those decisions.**

In that regard, the Court notes that the ECB was entitled to impose an administrative pecuniary penalty of up to 10% of the total annual turnover of the group to which the company in question belongs. It concludes that the ECB enjoys a wide discretion to determine the amount of the pecuniary penalty. It points out that, in such circumstances, respect for the rights conferred by the EU legal order in administrative procedures is of even more fundamental importance. Those rights include, inter alia, the right of the interested party to receive a sufficient statement of reasons for the decision at issue.

The Court points out that **the contested decisions do not provide details of the methodology applied by the ECB in determining the amount of the penalties imposed**, but merely highlight a number of considerations relating to the seriousness of the breach, its duration, the seriousness of the failure of which the applicant was accused as well as an assurance that one or more attenuating circumstances had been taken into account.

The Court also finds that, by not indicating in the decisions at issue the size of the credit institution that committed the breach in question, the ECB failed to mention a factor which, according to its own statements, was particularly relevant to the determination of the amount of the penalty. **The failure to mention the size of the credit institution concerned has prevented the Court from carrying out its review of the ECB's assessment of the criteria in Article 18(3) of Regulation 1024/2013, namely whether the penalties applied are effective, proportionate and dissuasive.**

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.

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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