Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

19 November 2025 *

(Economic and monetary policy – Prudential supervision of credit institutions – Directive 2013/36/EU – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the ECB – Assessment of acquisitions of qualifying holdings – Opposition to the acquisition of a qualifying holding – Right to be heard – Concept of 'qualifying holding' – Reputation and professional competence of the proposed acquirer – Rights protected by the Charter – Proportionality)

In Case T-366/23,

YH, represented by J. Lehnhardt, R. Hübner and A. Walter, lawyers,

applicant,

v

European Central Bank (ECB), represented by E. Yoo, R. Bax and V. Hümpfner, acting as Agents,

defendant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed, at the time of the deliberations, of R. da Silva Passos, President, N. Półtorak, I. Reine, T. Pynnä (Rapporteur) and H. Cassagnabère, Judges,

Registrar: A. Marghelis, Administrator,

having regard to the written part of the procedure,

having regard to the written questions put by the Court to the applicant and the ECB and their answers to those questions lodged at the Court Registry on 6 December 2024,

further to the hearing on 16 January 2025,

gives the following

* Language of the case: English.

Judgment

1 By her action under Article 263 TFEU, the applicant, YH, seeks annulment of the decision of the European Central Bank (ECB) of 5 May 2023 opposing the acquisition by the applicant of a qualifying holding in M.M. Warburg & Co (AG & Co.) KGaA ('the Target'), M.M. Warburg & CO Hypothekenbank AG ('Target Hyp') and Marcard, Stein & Co AG ('Target MS') ('the contested decision').

Background to the dispute

2 The Target is a 'less significant' credit institution, supervised directly by the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority, Germany; 'BaFin'), and indirectly by the ECB.

3 The Target is owned by the family of the applicant's husband. In 2013, the latter wished to organise the transfer of his holding in the capital of the Target to his children.

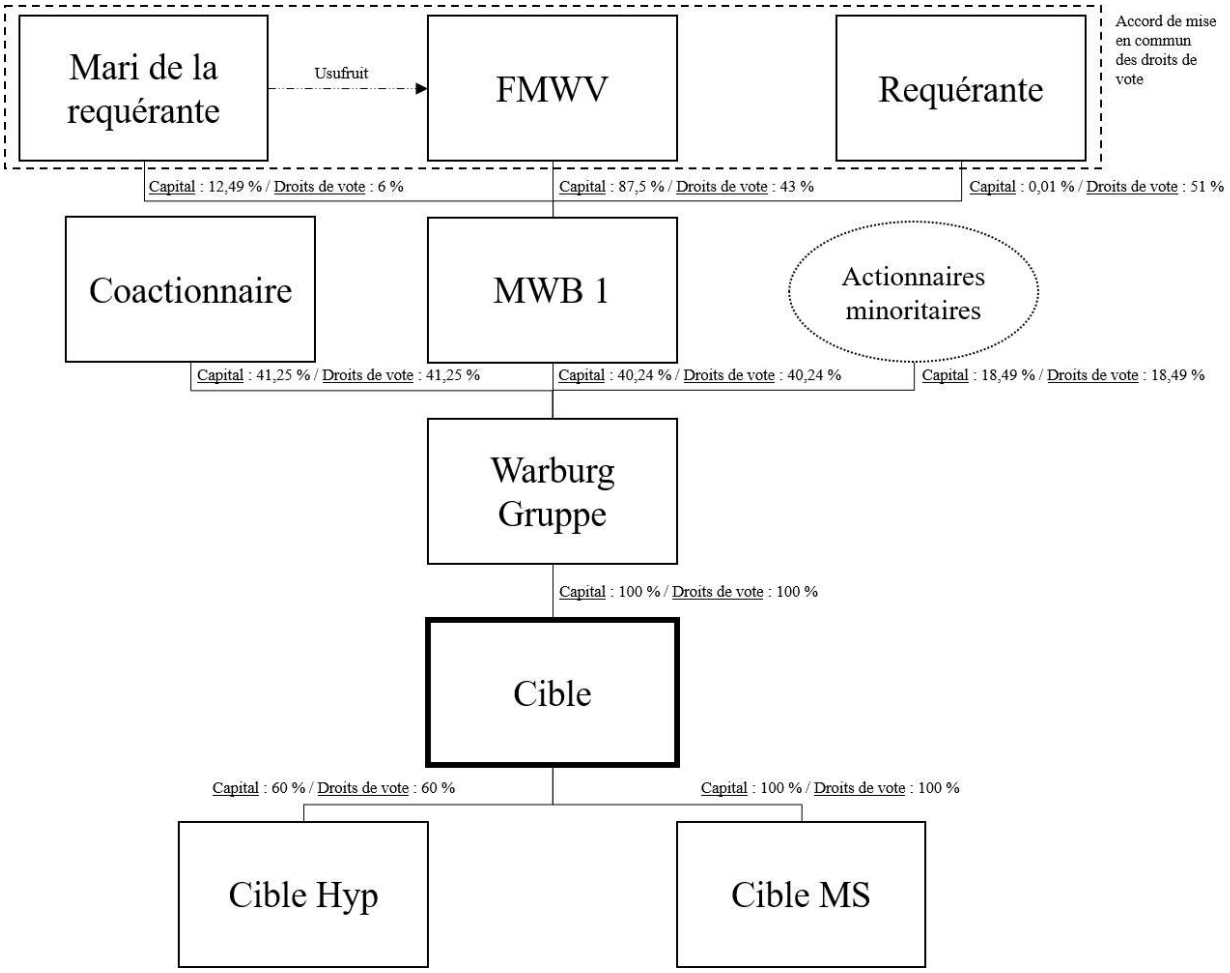
4 To that end, the applicant's husband, as a first step, transferred 87.5% of the capital in the company 1. Max Warburg Beteiligungsgesellschaft mbH ('MWB 1') to the company Familie Max Warburg Vermögensverwaltung KG ('FMWV') for the benefit of his children. He kept the remaining 12.5% of the capital in MWB 1 and, in particular, a golden share conferring on him 51% of the voting rights in MWB 1. FMWV and the applicant's husband undertook to exercise their voting rights in a uniform manner ('the pooling agreement') and the applicant's husband has a lifelong unpaid usufruct on the shares transferred to FMWV.

5 MWB 1 holds 40.24% of the capital in the financial holding company of the MMWarburg & CO prudential group, MMWarburg & CO Gruppe GmbH ('Warburg Gruppe'). Warburg Gruppe is also owned by another majority shareholder, holding a 41.25% stake, and by seven minority shareholders that include family members of the applicant's husband.

6 Warburg Gruppe in turn holds 100% of the capital in the Target, which itself held, at the time of the contested decision, 100% and 60%, respectively, of the capital in Target MS and Target Hyp, which are also credit institutions. Target Hyp was sold on 3 November 2022 and that sale became effective on 1 June 2023.

7 Through Warburg Gruppe, MWB 1 thus held an indirect holding in the Target, Target Hyp and Target MS (together 'the Targets').

8 As a second step, the applicant was to receive her husband's golden share, thereby acquiring 0.01% of the capital of MWB 1 and 51% of the voting rights in MWB 1 ('the proposed acquisition'). She was also to become a party to the pooling agreement in respect of MWB 1. Her husband, for his part, was to retain 12.49% of the capital and 6% of the voting rights in MWB 1, while FMWV was to retain the remaining 87.5% of the capital and 43% of the voting rights in MWB 1. The structure of the proposed acquisition is shown in the following diagram:



9 The implementation of that second step was delayed on account of an investigation by the German authorities into 'cum/ex' stock market transactions entered into by the Target between 2007 and 2011, when the applicant's husband was a managing director. In the course of a reassessment procedure conducted by BaFin in 2019 amid allegations of tax evasion against the applicant's husband owing to the 'cum/ex' stock market transactions, MWB 1 agreed with BaFin that the voting rights in Warburg Gruppe would be exercised through two proxies, who have been in place since February 2020.

10 On 12 November 2021, the applicant notified BaFin of the proposed acquisition, in accordance with the rules on the monitoring of qualifying holdings. That notification was received by BaFin on 16 November 2021.

11 On 16 August 2022, BaFin confirmed receipt of the notification of the proposed acquisition.

12 On 14 September 2022, BaFin requested further information on the proposed acquisition and asked the applicant to file two additional notifications for her acquisition of an indirect holding in Target MS and in Target Hyp.

13 The applicant responded to those requests on 29 September and 14 October 2022. She also submitted a notification for Target MS and Target Hyp on 12 December 2022 and 19 January 2023, respectively.

14 On 27 January 2023, with a view to being able to declare the notification of the proposed acquisition complete, BaFin sent an email to the applicant asking her to send it certain documents and to answer additional questions.

15 By email of 1 February 2023, the applicant replied to the questions posed by BaFin in its email of 27 January 2023 and sent the documents requested as attachments to her email, stating that they were sent 'in advance by email'. She also replied to those requests by letter.

16 On 3 February 2023, BaFin received the applicant's letter of reply referred to in paragraph 15 above.

17 On 21 February 2023, BaFin confirmed that it had received the information which made the notification complete on 3 February 2023. It informed the applicant that the assessment period of 60 working days had started to run on 8 February 2023 and would expire on 5 May 2023.

18 On 3 April 2023, the applicant and her counsel met representatives of the ECB, including the Chair of the Supervisory Board, to discuss the issues raised by the proposed acquisition.

19 On 4 April 2023, BaFin proposed to the ECB that it not oppose the proposed acquisition.

20 On 5 April 2023, the applicant proposed, by letter, that she exercise the voting rights held by MWB 1 in Warburg Gruppe with one of the two proxies for a period of one year, in order to address the concerns expressed by the ECB at the meeting of 3 April 2023. In response to that letter, the Chair of the ECB Supervisory Board informed the applicant, on 12 April 2023, that she would soon receive a draft decision opposing the proposed acquisition.

21 On 12 April 2023, the ECB sent the applicant a draft decision opposing the proposed acquisition on the ground that she did not fulfil the legal requirements for acquiring a qualifying holding in a credit institution. The applicant lodged a file inspection request and a request for an extension of the deadline for submitting her comments. On 14 April 2023, the ECB granted those requests.

22 On 21 April 2023, the applicant submitted her comments on the draft decision.

23 By email of 5 May 2023, the ECB sent the applicant the contested decision, which confirmed the substance of its draft decision referred to in paragraph 21 above. After concluding that the applicant was acquiring, through MWB 1, a qualifying holding in the Target of 100% of the voting rights and 100% of the capital, the ECB stated its reasons for considering that the applicant did not fulfil the legal criteria for acquiring such a qualifying holding. In the first place, the ECB took the view that the applicant did not meet the requirement of good repute, finding, first, that the applicant was under the influence of her husband, whom the ECB regarded as of bad repute, and, second, that she did not have adequate professional competence. In the second place, the ECB stated that the applicant was not sufficiently financially sound to provide the Target with the necessary own funds. In the third place, the ECB found, in particular, that the proposed acquisition did not permit effective prudential supervision of the Target.

24 On 8 May 2023, after several reminders sent by the ECB on 5 May 2023 seeking confirmation from the applicant's counsel that the contested decision had been received, her counsel replied to the ECB, disputing the validity of the notification of that decision.

25 By email of 12 May 2023, the applicant again challenged the validity of the notification of the contested decision and requested that she be sent the separate assessment note addressing her comments on the draft decision ('the separate assessment note'), referred to in the contested decision.

26 On 15 May 2023, the ECB sent the applicant the separate assessment note.

Forms of order sought

27 The applicant claims that the Court should:

– annul the contested decision;

– order the ECB to pay the costs.

28 The ECB contends that the Court should:

– dismiss the application as unfounded;

– order the applicant to pay the costs.

Law

29 The applicant raises seven pleas in law, alleging, first, infringement of the rules of procedure in the qualifying holding procedure, second, infringement of the right to be heard and of the obligation to state reasons, third, failure to examine the relevant facts and to adopt the decision solely on a sufficiently solid factual basis, fourth, incorrect interpretation and application by the ECB of the concept of a 'qualifying holding', fifth, incorrect interpretation and application by the ECB of the criteria for assessing the proposed acquirer, sixth, infringement of the Charter of Fundamental Rights of the European Union ('the Charter') and, seventh, infringement of the principle of proportionality.

The first plea in law, alleging infringement of the rules of procedure in the qualifying holding procedure

30 The applicant has divided the first plea into three parts, the first relating to failure to acknowledge receipt of the notification of the proposed acquisition, the second relating to failure to notify the contested decision, and the third relating to the expiry of the assessment period.

The first part, relating to failure to acknowledge receipt of the notification of the proposed acquisition

31 The applicant submits that, under the first subparagraph of Article 22(2) of 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338; 'the CRD IV Directive'), and the ninth sentence of Paragraph 2c(1) of the Gesetz über das

Kreditwesen (Kreditwesengesetz) (Law on credit institutions), in the version published on 9 September 1998 (BGBl. 1998 I, p. 2776), as amended by the Law of 22 February 2023 (BGBl. 2023 I Nr. 51) ('the KWG'), which transposed that directive, BaFin and the ECB should have acknowledged receipt of the notification of the proposed acquisition within two working days, that is to say, by 19 November 2021. In the present case, BaFin allowed eight months to elapse before requesting further information, and acknowledged receipt of the complete notification only on 21 February 2023, with retroactive effect from 8 February 2023.

32 The applicant claims that the period of two working days must run from the notification of the proposed acquisition, regardless of whether or not the notification is complete. That criterion of completeness does not appear in the first subparagraph of Article 22(2) of the CRD IV Directive, which refers only to the notification referred to in Article 22(1) of that directive, without reference to all the documents required for the purposes of the assessment. Moreover, that directive prohibits Member States from imposing notification requirements that are more stringent than those which it lays down. The ninth sentence of Paragraph 2c(1) of the KWG should therefore be interpreted to that effect and, consequently, cannot require that the notification be complete in order for the period of two working days to start to run, as is confirmed by paragraph 9.2 of the Joint Guidelines of the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, published on 20 December 2016 (JC/GL/2016/01; 'the Joint Guidelines').

33 The applicant also claims that that interpretation is consistent with the specific rules governing requests for further information, which are intended to prevent undue delays being caused by the competent authorities, in compliance with the principle of legal certainty. That interpretation protects proposed acquirers against significant delays in respect of a notified proposed acquisition, in accordance with the objectives pursued both by the CRD IV Directive and by Regulation (EU) No 468/2014 of the ECB of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the ECB and national competent authorities and with national designated authorities (OJ 2014 L 141, p. 1; 'the SSM Framework Regulation').

34 Lastly, the applicant argues that the effectiveness of prudential supervision is not undermined by the interpretation which she proposes, since the competent authorities can oppose an acquisition if the information provided by the proposed acquirer is incomplete. Nor does that interpretation lead to an increased workload for the competent authorities. The applicant is of the view that the rules on clear time limits laid down in the context of monitoring qualifying holdings must be complied with by the competent authorities, otherwise they could indefinitely delay their decision. The applicant therefore concludes that the notification should be deemed complete in the absence of a response from the competent authority within the prescribed period of two working days.

35 The ECB disputes the applicant's arguments.

36 As a preliminary point, it should be borne in mind that under Article 4(1)(c) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63; 'the SSM Regulation'), read in conjunction with Article 15(3) of the same regulation and Article 87 of the SSM Framework Regulation, the ECB has exclusive competence to decide whether or not to authorise the proposed acquisition, at the end of the procedure laid down, in particular, in

Article 15 of the SSM Regulation and Articles 85 and 86 of the SSM Framework Regulation (see, to that effect, judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 54).

37 Moreover, within the framework of relations governed by the principle of sincere cooperation by virtue of Article 6(2) of the SSM Regulation, the role of the national authorities, as is apparent from that provision, from Article 15(1) and (2) of the same regulation and from Articles 85 and 86 of the SSM Framework Regulation, consists in registering applications for authorisation and in assisting the ECB, which alone has the decision-making power, in particular by providing it with all the information necessary for carrying out its tasks, by examining such applications and then by forwarding to the ECB a proposal for a decision, which is not binding on the ECB (judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 55).

38 Therefore, it falls to the EU judicature, by virtue of its exclusive jurisdiction to review the legality of EU acts on the basis of Article 263 TFEU, to rule on the legality of the final decision adopted by the ECB and to examine, in order to ensure effective judicial protection of the persons concerned, any defects vitiating the preparatory acts or the proposals of the national authorities that would be such as to affect the validity of that final decision (see, to that effect, judgment of 19 December 2018, *Berlusconi and Fininvest*, C-219/17, EU:C:2018:1023, paragraph 44).

39 Under Article 22(1) of the CRD IV Directive, Member States are to require proposed acquirers to notify the competent authorities, in writing and in advance of the acquisition, of the credit institution in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4) of that directive. Article 22(2) of that same directive provides that the competent authorities are to acknowledge receipt of the notification to the proposed acquirer promptly, and in any event within two working days of receiving it, in writing. They have a maximum of 60 working days from the date of the written acknowledgement of receipt of the notification and all documents required by the Member States to be attached to the notification on the basis of the list referred to in Article 23(4) of the CRD IV Directive.

40 Article 23(4) of the CRD IV Directive provides that Member States are to publish a list specifying the information that is necessary to carry out the assessment and that must be provided to the competent authorities at the time of the notification referred to in Article 22(1) of that directive.

41 Article 22(1) and (2) and Article 23(4) of the CRD IV Directive were transposed into German law by Paragraph 2c(1) and (1a) of the KWG.

42 Under the second sentence of Paragraph 2c(1) of the KWG, proposed acquirers must indicate in their notification, first, the facts and documents that are relevant with regard to (i) establishing the size of the shareholding and extent of the significant influence, (ii) establishing their trustworthiness and (iii) examining other grounds for opposition under the first sentence of Paragraph 2c(1b) of the KWG, which must be specified by means of an order, in accordance with Paragraph 24(4) of the KWG, and, second, the persons and undertakings from which they intend to acquire the relevant shares.

43 Under the ninth sentence of Paragraph 2c(1) of the KWG, BaFin must then confirm in writing, to the party subject to the notification obligation, the receipt of a complete notification, without delay and at the latest within two working days of its receipt.

44 The first sentence of Paragraph 2c(1a) of the KWG provides that BaFin must carry out its assessment within 60 working days of the date of the letter by which it confirmed, in writing, the receipt of the complete notification. The second sentence of Paragraph 2c(1a) of the KWG states that the acknowledgement of receipt issued by BaFin must indicate the date on which the assessment period ends.

45 It follows from the wording of the German provisions cited in paragraphs 42 to 44 above, first, that BaFin is to acknowledge receipt of a complete notification without delay and at the latest within two working days of its receipt and, second, that the assessment period of 60 working days runs only from the date of issue of that acknowledgement of receipt, which must indicate the date on which the assessment period ends.

46 It should also be noted that, in order to standardise practice across Member States, in 2016 the European supervisory authorities adopted the Joint Guidelines.

47 In so far as concerns banking institutions, the legal basis for the Joint Guidelines is to be found in Article 16(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (EBA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12), in accordance with which the EBA, with a view to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision (ESFS), and to ensuring the common, uniform and consistent application of EU law, is to issue guidelines and recommendations addressed to the competent authorities or financial institutions.

48 Although the joint guidelines are non-binding legal acts, it is apparent from Article 16(3) of Regulation No 1093/2010 that the competent authorities and financial institutions are to make every effort to comply with them (Opinion of Advocate General Campos Sánchez-Bordona in *Berlusconi and Fininvest*, C-219/17, EU:C:2018:502, points 84 and 85). That provision states, nevertheless, that those authorities are to confirm whether they comply or intend to comply with those guidelines and that, if they do not, they are to inform the EBA of their choice, stating their reasons (judgment of 15 July 2021, *FBF*, C-911/19, EU:C:2021:599, paragraph 43). The ECB thus undertook to comply with the Joint Guidelines, as it stated in its written pleadings. It was also stated that BaFin had expressed its intention to comply with the Joint Guidelines.

49 Paragraph 9.1 of the Joint Guidelines reiterates the principle that the competent authorities must acknowledge receipt to the proposed acquirer, in writing, promptly and in any event within two working days of receipt of the notification. Paragraph 9.2 of the Joint Guidelines, on which the applicant herself relies in the first part of her first plea, states that an acknowledgement of receipt should be issued within two working days, irrespective of whether the notification is complete or not. That paragraph provides that, where the notification is incomplete, the competent authority should acknowledge receipt within two working days and inform the proposed acquirer of the missing information within a reasonable period of time.

50 However, an incomplete notification has neither the scope nor the effects of a complete notification, as specified in paragraph 9.1 of the Joint Guidelines. It is apparent from the second sentence of that paragraph 9.1 that the notification should be considered to be complete only when it includes all the information required by the Member State concerned. The third sentence of that paragraph further states that the acknowledgement of receipt should exclusively

constitute a procedural step relating to the formal completeness of the notification, having the effect of starting the 60-working-day period for the prudential assessment, and does not entail a substantive review by the supervisory authority of the target bank of the documentation provided.

51 By providing that an acknowledgement of receipt may have the effect of causing the assessment period of 60 working days to begin to run only if the notification is complete, that guidance merely reiterates the rule, laid down in Article 22(1) and (2) of the CRD IV Directive, according to which the period of 60 working days does not begin to run until the notification has been received together with 'all documents required by the Member State' and after receipt has been acknowledged by the competent authority within two working days of such receipt.

52 It follows from the foregoing, first, that a notification which is incomplete does not cause the period of 60 working days provided for in Article 22(2) of the CRD IV Directive to begin to run, second, that where a notification is incomplete, the competent authority is not required to specify the missing information in the acknowledgement of receipt of the incomplete notification, but is only required to do so within a reasonable period of time and, third, that, as provided for in Paragraph 2c(1a) of the KWG, the assessment period of 60 working days starts to run from the date of the written acknowledgement of receipt of the complete notification.

53 The applicant claims, however, in essence, that, by failing to acknowledge receipt of the notification of 12 November 2021 and by failing to send her the list of missing information within a reasonable period, BaFin unduly delayed the ECB's assessment of the proposed acquisition.

54 In that regard, it should be noted that it is apparent from the documents before the Court that BaFin did not respond to the notification of 12 November 2021 until nine months later, that is to say, after a relatively long period of time had elapsed. This did, in fact, delay the actual start of the ECB's assessment of the proposed acquisition.

55 However, according to the case-law of the Court, failure to comply with a mandatory rule of procedure can render the final decision of the institution concerned unlawful only if it is sufficiently substantial and has a detrimental effect on the legal and factual situation of the party alleging such an irregularity (see, to that effect, judgment of 21 December 2022, *Vialto Consulting* v *Commission*, T-537/18, not published, EU:T:2022:852, paragraph 183 and the case-law cited).

56 In the present case, having regard to the legislative framework set out in paragraphs 39 to 52 above, the fact that BaFin did not issue an acknowledgement of receipt when it received the notification of 12 November 2021, which was incomplete at that time, did not affect either the content of the contested decision or the assessment period of 60 working days.

57 In addition, according to the ECB, the nine months taken by BaFin to respond to the notification of the proposed acquisition is explained by the fact that, until a telephone conversation with the applicant, BaFin considered that the applicant's notification concerned only part of Warburg Gruppe's proposed merger with the Target.

58 In that regard, the Court notes that, when the notification of the proposed acquisition was lodged, the applicant stated that that notification was made 'in connection with' the proposed merger of Warburg Gruppe and the Target. In such circumstances, BaFin was entitled to take the view, as the ECB maintains, that the notification of 12 November 2021 had to be analysed in the broader context of another project.

59 It must therefore be held that the applicant has not shown how the failure to send an acknowledgement of receipt of the incomplete notification was sufficiently substantial. Nor does she rely on any evidence establishing that the absence of such an acknowledgement of receipt was capable of affecting her legal and factual situation, in accordance with the case-law referred to in paragraph 55 above.

60 It follows that the first part of the first plea in law must be rejected.

The third part, relating to the expiry of the assessment period

61 The applicant claims that, under Article 22(2) and (6) of the CRD IV Directive, as transposed into German law, the competent authority must carry out its assessment within a strict time limit of no more than 60 working days, in the absence of requests for further information. If, within that period, the competent authority does not oppose the proposed acquisition notified to it, the proposed acquisition is deemed to have been approved.

62 First, the applicant argues that the notification of the proposed acquisition of 12 November 2021 was received by BaFin on 16 November 2021, which should have led to the assessment period beginning on 19 November 2021.

63 The applicant argues that the imposition of tight deadlines on the competent authority makes the assessment procedure clear and predictable, while ensuring that a decision is adopted rapidly.

64 The applicant adds that, pursuant to Article 41 of the Charter and the preparatory documents for the transposition into German law of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ 2007 L 247, p. 1), the ninth sentence of Paragraph 2c(1) of the KWG must be interpreted as meaning that, irrespective of a confirmation of completeness, the assessment period begins to run two days after receipt of the notification by BaFin.

65 Second, and in the alternative, the applicant claims that, in view of BaFin's acknowledgement of receipt dated 16 August 2022, the assessment period should have started on 19 August 2022.

66 Third, and in the further alternative, the applicant submits that, since she filed the last notifications for Target MS and Target Hyp by 19 January 2023, the assessment period, even in the absence of an acknowledgement of receipt, should have started on 23 January 2023. As BaFin's request for further information was made on 27 January 2023, that is to say after the mandatory deadline of two working days, the assessment period should have ended on 19 April 2023 at the latest.

67 Fourth, in the applicant's view, BaFin incorrectly calculated the assessment period on the basis of the assumption that it had received the last information from the applicant on 3 February 2023, even though the last information requested was provided by the applicant on 1 February 2023. The ECB is not justified in claiming that the notification and the accompanying information must be submitted in written form, since that position not only contradicts the fact that the ECB itself chooses whichever electronic means of notification it considers appropriate, but is also legally flawed, since that method of notification is required neither by Article 22 of the CRD IV Directive nor by Paragraph 2c(1a) of the KWG.

68 The applicant concludes that the ECB did not oppose the proposed acquisition within the assessment period, with the result that it must be deemed to have been approved.

69 The ECB disputes the applicant's arguments.

70 In that regard, it should be borne in mind that, under Article 22(6) of the CRD IV Directive, if the competent authorities do not oppose the proposed acquisition, in writing, within the assessment period, it is to be deemed to be approved.

71 That provision is transposed into German law by the eighth sentence of Paragraph 2c(1b) of the KWG, which provides that if, during the assessment period, the supervisory authority does not object in writing to the acquisition or increase of the holding, the acquisition or increase may go ahead.

72 As is apparent from the examination of the first part of the first plea in law, the assessment period of 60 working days does not begin to run until the date of acknowledgement of receipt of the complete notification (see paragraph 45 above).

73 In addition, it is clear from Article 22(1) of the CRD IV Directive that the notification of a qualifying holding must be made in writing, but that written form is not defined in that provision. Under German law, the first sentence of Paragraph 2c(1) of the KWG provides, therefore, that the notification of a qualifying holding must be made in writing, in accordance with the second sentence of that Paragraph 2c(1). That second sentence states that proposed acquirers must, in their notification, state the essential facts and documents, which must, inter alia, be specified by way of an order, in accordance with Paragraph 24(4) of the KWG.

74 Consequently, the provision, by the applicant, of the information thus requested was a necessary condition for BaFin to send the acknowledgement of receipt of the complete notification, which allows the assessment period to begin to run.

75 In the present case, on 27 January 2023 BaFin requested information relating to the applicant's financial situation. That information concerned, in particular, the determination of the purchase price of her shareholding in the Target, her tax returns and the description of her sources of income.

76 That type of information appears in Paragraph 13(3) of the Verordnung über die Anzeigen nach § 2c des Kreditwesengesetzes und § 17 des Versicherungsaufsichtsgesetzes (Inhaberkontrollverordnung) (Regulation on the monitoring of shareholders) of 20 March 2009 (BGBl. 2009 I, p. 562; 'the InhKontrollV'), which specifies the information required for notification of an acquisition of a qualifying holding, in accordance with Paragraph 24(4) of the KWG.

77 It follows that, before that information was received, the notification was not complete and, therefore, the assessment period could not begin to run.

78 On 1 February 2023, the applicant sent BaFin an email in response to the latter's request of 27 January 2023. That email included, as attachments, a scanned version of the reply letter signed with the applicant's name, bearing the words 'in advance by email', and four annexes in PDF format. That letter and those annexes were also sent by the applicant by post.

79 By an acknowledgement of receipt dated 21 February 2023, BaFin informed the applicant that her reply letter of 1 February 2023 had been received on 3 February 2023 and that her notification was deemed complete. In the same letter, BaFin expressly informed the applicant that the assessment period was therefore to run from 8 February to 5 May 2023.

80 In that regard, it should be noted that, until the lodging of her application, the applicant did not make any comments on that letter, by which BaFin had determined that the assessment period began to run not from receipt of the email of 1 February 2023, but from receipt of the documents in hard copy on 3 February 2023.

81 In the light of that acknowledgement of receipt, the assessment period could not therefore begin before 8 February 2023, or end before 5 May 2023, in accordance with Paragraph 2c(1a) of the KWG, read and interpreted in the light of the second subparagraph of Article 22(2) of the CRD IV Directive.

82 On that basis alone, the ECB did not err in law and, in particular, did not infringe Article 41 of the Charter in finding that the assessment period ran from 8 February 2023 to 5 May 2023.

83 The applicant claims, however, that she provided the last of the information required on 1 February 2023, and not on 3 February 2023, as BaFin maintains. In her view, the ECB is not justified in maintaining that the information accompanying the notification must be submitted in written form and, thus, in considering that the notification was complete only as of 3 February 2023. The applicant thus maintains that compliance with the written form requirement was not necessary with regard to the information requested by BaFin on 27 January 2023.

84 In that regard, it should be noted that the applicant complied with the written form required by BaFin and the ECB for the initial notification of the proposed acquisition of 12 November 2021.

85 The question that arises is therefore whether, in essence, the same form should have been required for the provision of the information requested by BaFin on 27 January 2023, for the purpose of declaring the notification of the proposed acquisition complete.

86 As is apparent from paragraphs 73 to 77 above, that information – which related to the applicant's financial situation and concerned, in particular, the determination of the purchase price of her shareholding in the Target, her tax returns and the description of her sources of income – had to be communicated to BaFin in order for the notification of the proposed acquisition to be regarded as complete. Such information therefore also had to be provided to BaFin in the form applicable to the initial notification.

87 It is, however, common ground that the applicant's email of 1 February 2023, sent in response to BaFin's requests of 27 January 2023, does not comply with the written form required for the initial notification. Furthermore, although the applicant disputes, in her written pleadings, the applicability, in the present case, of the first sentence of Paragraph 126 of the Bürgerliches Gesetzbuch (German Civil Code), it is apparent from the documents before the Court that the applicant effected the notification of 12 November 2021 by letter. In so doing, the applicant accepted that the written form demanded by the first sentence of Paragraph 2c(1) of the KWG required the abovementioned notification to be sent in physical form signed by the applicant.

88 In that regard, the Court asked the parties, by way of a measure of organisation of procedure dated 13 November 2024, to clarify the definition of the written form referred to in that first sentence of Paragraph 2c(1) of the KWG, in the light of German national law. That question was also discussed at the hearing.

89 It is apparent from the parties' written replies, and from their oral submissions at the hearing, that neither the German legal framework nor the national administrative courts have defined the written form prescribed in the first sentence of Paragraph 2c(1) of the KWG, transposing Article 22(1) of the CRD IV Directive. As the ECB explains, the first sentence of Paragraph 126 of the German Civil Code is also relevant in the context of the application of the first sentence of Paragraph 2c(1) of the KWG. That provision provides that, if the written form is prescribed by law, the document in question must be signed by hand, by the issuer, with his or her name or by his or her initials certified by a notary.

90 In the present case, the applicant herself mentioned, at the beginning of her email of 1 February 2023, the following expression: 'in advance by email'. She also explained at the hearing that she had sent the documents attached to that email in physical form in order to avoid a situation in which the time limit would not start to run until the documents were received in that form.

91 In so doing, not only did the applicant not contest the fact that the obligation to notify the proposed acquisition, which had to be done 'in writing', required sending the documents in hard copy, but she appears to have admitted that fact herself.

92 Moreover, under the conditions laid down in Paragraph 3a(2) of the Verwaltungsverfahrensgesetz (Law on administrative procedure), in the version published on 23 January 2003 (BGBl. I, p. 102) ('the German Law on administrative procedure'), electronic form may replace the written form. According to that paragraph, the transmission of electronic documents is to be authorised only 'to the extent that the recipient provides access to that effect' or if the documents concerned are accompanied by a qualified electronic signature, within the meaning of point 12 of Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ 2014 L 257, p. 73). However, in the present case, neither of these two conditions is satisfied.

93 In response to an oral question put by the Court, and in addition to its reply to the measure of organisation of procedure referred to in paragraph 88 above, the ECB explained, without being contradicted on that point by the applicant, that BaFin had indicated in its emails the specific email addresses to which the documents were to be sent in electronic format. It further explained that the BaFin website also expressly stated that any electronic document had to be sent exclusively to those two addresses, a point which was again not disputed by the applicant at the hearing.

94 However, the fact remains that, following the email sent to her by BaFin on 27 January 2023, which referred to those functional addresses, the applicant did not send the email of 1 February 2023 to either of them, and the documents, which in their original form bore a handwritten signature, did not contain an electronic signature.

95 It follows that the documents sent by the applicant on 1 February 2023 cannot be regarded as having been validly notified by electronic means and as therefore having validly completed the notification of the proposed acquisition of 12 November 2023.

96 Lastly, in the light of the provisions of Paragraph 3a(2) of the German Law on administrative procedure, the claim that the applicant could respond to BaFin's email of 27 January 2023 by way of an email sent to that same address must be rejected.

97 In any event, it should also be pointed out that each party to the procedure must comply with the rules applicable to it. While the notification of the proposed acquisition was subject to the conditions laid down in the first sentence of Paragraph 2c(1) of the KWG, the notification of a prudential supervisory decision by the ECB would, for its part, have to comply with the legal framework set out in paragraphs 123 to 126 below, which will be examined in the context of the second part of the first plea in law.

98 It follows from the foregoing that, having regard to the legal and factual context of the present case, in so far as the applicant sent the information requested by email to an address which was not intended for that purpose, while announcing that she was sending it in physical format and carrying out that action, BaFin did not err in law when it took the view that the notification in writing was complete on the day on which the information sent in physical form by the applicant was received, namely 3 February 2023.

99 It follows from the foregoing considerations that the third part of the first plea in law must be rejected.

The second part, relating to a failure to provide the contested decision in written form and to notify it

100 In the first place, the applicant claims that the contested decision is unlawful in that it was not notified to the applicant in accordance with Article 35(1) and (10) and Article 88(1)(b) of the SSM Framework Regulation.

101 The contested decision was sent to the applicant as an email attachment, even though the ECB had not issued a decision on the criteria for electronic service in accordance with Article 35(10) of the SSM Framework Regulation.

102 The applicant adds that Article 35(10) of the SSM Framework Regulation does not allow the ECB to choose the means of electronic communication which it considers appropriate for notifying a decision. That article requires the ECB to adopt criteria for electronic service which are consistent with the principle of legal certainty and which allow the addressee of the decision to verify the authenticity of that decision and the precise time it is served. In that regard, the applicant refers, by analogy, to Article 100(3) of the Rules of Procedure of the General Court.

103 In the second place, the applicant adds that she was unable to take cognisance of the contested decision because the separate assessment note, which forms an integral part of the ECB's reasoning, was not sent to her as a part of, or as an annex to, the contested decision.

104 In the third place, in her replies to the measure of organisation of procedure of 13 November 2024, the applicant submits that it is apparent from the fifth and eighth sentences of Paragraph 2c(1b) of the KWG and Article 22(6) of the CRD IV Directive that a decision to oppose a proposed

acquisition of a qualifying holding must be adopted and notified in writing. Under Paragraph 37(2) and (3) of the German Law on administrative procedure, that written form requires the administrative act to exist in physical form.

105 It is true that the written form can be replaced by electronic form in accordance with Paragraph 3a(2) and Paragraph 37(3) of the German Law on administrative procedure. However, the contested decision does not comply with that form, as it is not signed with a qualified electronic signature within the meaning of point 12 of Article 3 of Regulation No 910/2014.

106 The applicant is also of the view that the contested decision is vitiated by a lack of authentication, which must in itself lead to its annulment.

107 The ECB rejects the applicant's claims.

108 By her third complaint, the applicant submits, in her replies to the measure of organisation of procedure of 13 November 2024, that the contested decision complies neither with the written form, since it is not in a physical form, nor with the electronic form, in the absence of a qualified electronic signature.

109 However, the validity of the notification of the contested decision cannot be called into question under national procedural law.

110 First, as noted in paragraphs 36 and 37 above, the procedure for monitoring qualifying holdings is a composite procedure which takes place first before the national competent authority and then before the ECB. In that context, the ECB is required to apply 'all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives', in accordance with Article 4(3) of the SSM Regulation. In that regard, recital 34 of that regulation states that 'the ECB should apply the material rules relating to the prudential supervision of credit institutions'.

111 Consequently, Paragraph 3a and Paragraph 37 of the German Law on administrative procedure, which do not come within the scope of substantive law relating to prudential supervision, do not have to be applied by the ECB.

112 Second, supposing that the notification was not made in writing or by electronic means, within the meaning of German law, it should be borne in mind that, in order for a decision to be properly notified, it is sufficient for the decision to be communicated to the addressee and for the latter to be in a position to take cognisance of it, it being noted, moreover, that any irregularities in the procedure for notification do not invalidate the notified act itself (judgment of 12 March 2020, *LL-Carpenter* v *Commission*, T-531/18, not published, EU:T:2020:91, paragraph 110 and the case-law cited).

113 In the present case, the contested decision was brought to the applicant's attention by the email of 5 May 2023. That decision expressly stated the ECB's opposition to the proposed acquisition and also set out the reasons for that opposition.

114 Also on 5 May 2023, the ECB requested, by email, confirmation of receipt of the contested decision. On 8 May 2023, counsel for the applicant replied to that email, stating that he challenged the validity of the notification and requesting information concerning the criteria to be met for electronic notification.

115 The applicant does not therefore dispute that she received the contested decision and that she was able to take cognisance of it on 5 May 2023. That cognisance is, in any event, evidenced by the fact that, on 12 May 2023, she requested communication of the separate assessment note, referring expressly to the reference made in the contested decision to that note.

116 The alleged failure to comply with the written and electronic form cannot therefore, in the present case, adversely affect the applicant's legal and factual situation, within the meaning of the case-law cited in paragraph 55 above. In any event, since failure to comply with the rules relating to the notification of the contested decision is not capable of affecting the lawfulness of that decision, it must be held that the applicant's complaint is ineffective.

117 Consequently, the applicant's arguments must be rejected.

118 Lastly, the applicant relies on a failure to authenticate the contested decision, on the ground, in particular, that it is not accompanied by a qualified electronic signature. Such authentication constitutes an essential procedural requirement, breach of which may give rise to annulment of the relevant act and may be raised by the Court of its own motion (see, to that effect and by analogy, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 152).

119 In that regard, it is clear from the case-law that the authentication of an act is intended to guarantee legal certainty by ensuring that the text adopted by the author of the act becomes definitive. Checking compliance with the requirement of authentication thus amounts to checking the definitive nature of the act (see, to that effect, judgment of 28 November 2019, *Banco Cooperativo Español* v *SRB*, T-323/16, EU:T:2019:822, paragraphs 75 and 77).

120 In the present case, as the applicant notes in her application, the contested decision exactly reproduces the draft decision communicated to the applicant during the administrative procedure, aside from certain minor changes of a formal nature. The applicant does not claim that the contested decision was amended after it was signed and does not dispute either the identity or the authority of the person who signed it. She merely points out the formal irregularity of that signature, without contesting its probative value.

121 Consequently, and in the absence of any other factor capable of giving rise to doubt as to the definite nature of the contested decision, the authentication of that decision cannot be called into question.

122 As regards the applicant's argument that she was not notified of the contested decision in accordance with Article 35(1) and (10) and Article 88(1)(b) of the SSM Framework Regulation, the following should be noted.

123 Under Article 35(1) and (10) of the SSM Framework Regulation, the ECB may notify an ECB supervisory decision to a party, inter alia, electronically. Article 35(10) of the SSM Framework Regulation provides, also, that the ECB may determine the criteria under which an ECB supervisory decision may be served by electronic or other comparable means of communication.

124 It is common ground that the ECB has not determined such criteria. However, the wording of Article 35 of the SSM Framework Regulation does not make the possibility for the ECB to notify a supervisory decision electronically conditional on the prior definition of those criteria. Indeed, Article 35(10) of the SSM Framework Regulation provides only the possibility for the ECB to

determine the criteria under which an ECB supervisory decision may be served by electronic or other comparable means of communication. That article did not therefore preclude the ECB from notifying the contested decision to the applicant by email.

125 Furthermore, under Article 88(1)(b) of the SSM Framework Regulation, the ECB is to notify the parties without undue delay, in accordance with Article 35 of that framework regulation, of decisions on the acquisition of a qualifying holding in a credit institution.

126 Lastly, Article 22(5) of the CRD IV Directive provides that if the competent authorities decide to oppose the proposed acquisition, they are, within two working days of completion of the assessment, and without exceeding the assessment period, to inform the proposed acquirer in writing, providing the reasons.

127 According to the case-law, a decision is duly notified once it has been communicated to the person to whom it is addressed and that person is placed in a position to take cognisance of it. A method of notification is thus considered appropriate where it makes it possible to determine with certainty the starting point of the time limit for instituting proceedings (see, to that effect, judgment of 6 April 1995, *BASF and Others* v *Commission*, T-80/89, T-81/89, T-83/89, T-87/89, T-88/89, T-90/89, T-93/89, T-95/89, T-97/89, T-99/89 to T-101/89, T-103/89, T-105/89, T-107/89 and T-112/89, EU:T:1995:61, paragraph 59).

128 It must be held that, by informing the applicant of its decision to oppose the proposed acquisition, and of the reasons for that decision, by an email of 5 May 2023, under conditions consistent with Article 22(5) of the CRD IV Directive, the ECB did not infringe the provisions of Article 35(1) and (10) and Article 88(1)(b) of the SSM Framework Regulation.

129 The applicant's arguments must therefore be rejected.

130 The applicant cannot, moreover, claim that the delay in sending the separate assessment note did not enable her to take cognisance of the contested decision.

131 It is admittedly common ground that the separate assessment note was only communicated to the applicant, at her request, on 15 May 2023, that is to say, 10 days after the notification of the contested decision. The ECB claims that this delayed communication was due to an internal error.

132 However, that later communication of the separate assessment note does not have any effect on the calculation of the time limit within which the ECB must complete its assessment, since, as stated in paragraphs 112 to 115 above, the contested decision, as communicated to the applicant on 5 May 2023, clearly indicated the ECB's opposition to the proposed acquisition, an opposition which the applicant disputes in her action.

133 In fact, the ECB's opposition to the proposed acquisition is the subject of a statement of reasons in the contested decision. The ECB finds that there was acting in concert and, consequently, the acquisition of a qualifying holding by the applicant. It also details the reasons the applicant does not satisfy the criteria which must be fulfilled by a shareholder seeking to acquire a qualifying holding, as explained in paragraph 23 above.

134 Accordingly, the applicant's argument in that regard must be rejected.

135 In the light of the foregoing considerations, the second part of the first plea must therefore be rejected and, accordingly, the first plea in law must be rejected in its entirety.

The second plea in law, alleging infringement of the right to be heard and of the obligation to state reasons

136 The applicant has divided her second plea into two parts, the first relating to infringement of her right to be heard, and the second relating to infringement of the obligation to state reasons.

The first part, relating to infringement of the right to be heard

137 The applicant submits that, in the light of Article 41(2)(a) of the Charter, Article 31 of the SSM Framework Regulation and the first subparagraph of Article 22(1) of the SSM Regulation, the ECB infringed her right to be heard.

138 The ECB adopted the contested decision on the basis of facts referred to for the first time in a separate assessment note that was sent to the applicant ten days after the adoption of the contested decision and which should therefore be disregarded. Those facts nevertheless led the ECB to conclude that the shareholders of Warburg Gruppe were acting in concert. The ECB then found that the proposed acquisition related to a qualifying holding of 100% of the voting rights and capital in the Target, as well as an acquisition of control of Target MS and Target Hyp.

139 The ECB therefore deprived the applicant of the opportunity to comment on those facts and thus to demonstrate that the shareholders of Warburg Gruppe were not acting in concert, in particular as regards the proposed acquisition. If the shareholders of Warburg Gruppe were not found to be acting in concert, the applicant's qualifying holding would not amount to 100% of the voting rights and capital in the Target and the ECB could have applied less strict assessment criteria to the proposed acquisition.

140 The applicant adds that the separate assessment note contains a flawed analysis, since the ECB was wrong to take into account the same facts in order to establish the existence of acting in concert both at the level of MWB 1 and at the level of Warburg Gruppe. Similarly, the ECB was wrong to take into account the notification, based on acting in concert, of the planned merger between Warburg Gruppe and the Target in order to conclude that the shareholders of Warburg Gruppe were, in general, acting in concert. That notification resulted from the first sentence of Paragraph 2c(1) of the KWG, which requires joint notification if the shareholders are acting in concert for the purpose of the proposed transaction. The applicant also maintains that the ECB failed to produce factual evidence to demonstrate the existence of a voting pattern between the shareholders of Warburg Gruppe.

141 The applicant claims that, even in the absence of a finding of acting in concert between the shareholders of Warburg Gruppe, a 40.24% holding in the capital of the Target could not be attributed to her, since that reasoning is based on the second sentence of Paragraph 5(1) of the InhKontrollV, which is unlawful.

142 In any event, the applicant argues that it cannot be ruled out that the outcome of the procedure might have been different if she had been given the opportunity to put forward her point of view, with the result that the procedure is vitiated.

143 The ECB rejects the applicant's claims.

144 The applicant criticises the ECB, in essence, for not having heard her views on the evidence on which the ECB relied in order to find that Warburg Gruppe's shareholders are acting in concert, since that information appears only in the separate assessment note, which was communicated after the notification of the contested decision.

145 It should be recalled that Article 41(2)(a) of the Charter provides that the right to good administration includes the right of every person to be heard before any individual measure which would adversely affect him or her is taken.

146 The right to be heard guarantees every person the opportunity to make known his or her views effectively during an administrative procedure and before the adoption of any decision liable to affect his or her interests adversely. Furthermore, it is settled case-law that the right to be heard pursues a dual objective. First, it enables the case to be examined and the facts to be established in as precise and correct a manner as possible, and second, it ensures the effective protection of the person concerned. The right to be heard is intended, inter alia, to guarantee that any decision adversely affecting a person is adopted in full knowledge of the facts, and its purpose is, in particular, to enable the competent authority to correct an error or to enable the person concerned to submit such information relating to his or her personal circumstances as will argue in favour of the adoption or non-adoption of the decision or in favour of its having a specific content (see judgment of 22 November 2023, *Del Valle Ruíz and Others* v *SRB*, T-302/20, T-303/20 and T-307/20, EU:T:2023:735, paragraph 141 and the case-law cited).

147 As is apparent from its very wording, Article 41(2)(a) of the Charter is of general application. It follows that the right to be heard must be observed in all procedures which are liable to culminate in a measure adversely affecting a person, even where the applicable legislation does not expressly provide for such a procedural requirement (see judgment of 22 November 2023, *Del Valle Ruíz and Others* v *SRB*, T-302/20, T-303/20 and T-307/20, EU:T:2023:735, paragraph 142 and the case-law cited).

148 In the light of its character as a fundamental general principle of EU law, the application of the principle of the rights of the defence, which include the right to be heard, cannot be excluded or restricted by any legislative provision. Respect for that principle must therefore be ensured both where there is no specific legislation and also where legislation exists which does not itself take account of that principle (see judgment of 22 November 2023, *Del Valle Ruíz and Others* v *SRB*, T-302/20, T-303/20 and T-307/20, EU:T:2023:735, paragraph 143 and the case-law cited).

149 It is apparent from Article 31(1) of the SSM Framework Regulation that, before the ECB may adopt a supervisory decision that would adversely affect the rights of a party, and except in cases of urgency, that party must have been given the opportunity to comment in writing to the ECB on the facts, objections and legal grounds relevant to the ECB supervisory decision, it being specified that the notification by which the ECB gives the party the opportunity to comment is to state the material content of the intended supervisory decision and the material facts, objections and legal grounds on which it intends to base its decision.

150 The first subparagraph of Article 22(1) of the SSM Regulation also provides that, except in cases of urgency, the ECB is to base its decisions on the assessment of a qualifying holding only on objections on which the parties concerned have been able to comment.

151 In the present case, the draft decisions drawn up by the ECB and BaFin specify the material facts and legal reasons on which the contested decision is based. Those draft decisions find, in particular, that the shareholders of Warburg Gruppe are acting in concert. In the light of that acting in concert, the draft decisions went on to analyse the proposed acquisition and concluded that it would result in the applicant acquiring a qualifying holding in the Target.

152 In accordance with Article 31(1) of the SSM Framework Regulation, the ECB sent to the applicant a copy of the draft contested decision, which expressly refers, in paragraphs 1.1 and 2.1 thereof, to the analysis carried out by BaFin in its draft decision. On 14 April 2023, the applicant obtained access to the file. She was thus in a position to familiarise herself with BaFin's draft decision.

153 In her observations of 21 April 2023 on the ECB's draft decision, the applicant was thus able to put forward her views regarding the finding that the shareholders of Warburg Gruppe were acting in concert, in order to challenge the conclusion that she would acquire a qualifying holding in the Target. She stated, inter alia, that the shareholders of Warburg Gruppe were not acting in concert and claimed that the ECB's finding in that regard was arbitrary, since it was unsubstantiated.

154 It is apparent from the separate assessment note that the ECB took into account the applicant's observations and responded to them. In so doing, the ECB specified the factors which, in its view, demonstrated that the shareholders of Warburg Gruppe were acting in concert.

155 It follows that the applicant exercised her right to be heard concerning that aspect of the contested decision, prior to its adoption.

156 Accordingly, the first part of the second plea in law must be rejected.

The second part, relating to an insufficient statement of reasons for the contested decision

157 In the first place, the applicant submits that the contested decision does not contain an adequate statement of reasons in the light of Article 296(2) TFEU, Article 33(1) and (2) of the SSM Framework Regulation, and the second sentence of the first subparagraph of Article 22(1) and the second subparagraph of Article 22(2) of the SSM Regulation.

158 In the second place, the applicant is of the view that the statement of reasons for the contested decision should be sufficient in itself without having to refer to the separate assessment note, which is not an integral part of the contested decision unless it is annexed thereto. That assessment note was also drawn up after the adoption of the contested decision. However, the facts on which the ECB relies to establish the existence of acting in concert at the level of Warburg Gruppe are contained only in the separate assessment note. Proof lays in the fact that the separate assessment note is almost twice as long as the contested decision and that the ECB refers to that note on numerous occasions in its written submissions.

159 The applicant adds, to her replies to the measure of organisation of procedure of 13 November 2024, that the separate assessment note, which constitutes an essential element of the contested decision, is not inextricably linked to that decision and that no qualified electronic signature is associated with it. It is not possible to determine the version of that document that was presented to the Governing Council for adoption. Its authenticity cannot therefore be established.

160 The applicant also states that it is irrelevant that, once the separate assessment note had been received, she had sufficient time to bring an action. First, it was only at her request that the ECB sent her the separate assessment note. Next, it is not possible to shorten in any way the time limits for bringing an action, which are a matter of public policy. Lastly, according to the applicant, the case-law requires that the statement of reasons for a decision issued by an institution be communicated at the same time as the notification of the decision in question, a fortiori where such a decision must be adopted within a prescribed period, as in the present case.

161 In the third place, the applicant is of the view that the ECB amended and supplemented the grounds of the contested decision in the course of the proceedings, which is contrary to the case-law. In particular, the applicant submits that the ECB's arguments relating to her alleged bad repute and lack of professional competence, newly put forward as regards both the content of her application and her correspondence with BaFin, should be rejected. Similarly, she states that the ECB could not rely on the 2022 decision adopted under the 'Supervisory Review and Evaluation Process' ('SREP decision'), since that decision postdates the contested decision. It is also not apparent from the non-confidential version of the 2021 SREP decision that the applicant's husband exposed the Target to significant risks.

162 Lastly, the applicant states that the analysis according to which she would, in any event, acquire 40.24% of the capital in the Target pursuant to the second sentence of Paragraph 5(1) of the InhKontrollV is entirely absent from the contested decision and cannot therefore be taken into account.

163 The ECB disputes those arguments.

164 In the first place, it should be borne in mind, first, that the second paragraph of Article 296 TFEU provides that legal acts of the institutions of the Union are to state the reasons on which they are based and, second, that the right to good administration, enshrined in Article 41 of the Charter, imposes an obligation on the institutions, bodies, offices and agencies of the Union to give reasons for their decisions (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 102).

165 The statement of the reasons for the decision of an EU institution, body, office or agency is particularly important in so far as it allows persons concerned to decide in full knowledge of the circumstances whether it is worthwhile to bring an action against the decision, and the court with jurisdiction to review it; it is therefore a requirement for ensuring that the judicial review guaranteed by Article 47 of the Charter is effective (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 103 and the case-law cited).

166 It is also clear from the case-law of the Court of Justice that the statement of reasons must be appropriate to the nature of the legal act at issue and to the context in which it was adopted. In that regard, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question and, in particular, in the light of the interest which the addressees of the measure may have in obtaining explanations. Consequently, the reasons given for a measure adversely affecting a person are sufficient if that measure was adopted in a context which was known to that person

and which enables him or her to understand the scope of the measure concerning him or her (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 104 and the case-law cited).

167 In the present case, the facts relating to the proposed acquisition and the conclusion that it would lead to the acquisition, by the applicant, of a qualifying holding in the Target, in view of the Warburg Gruppe's shareholders acting in concert, are set out in paragraphs 1.1 to 1.5 and 2.1 of the contested decision.

168 The criteria justifying the ECB's opposition to the proposed acquisition, referred to in paragraph 23 above, are, moreover, clearly examined in the contested decision in paragraphs 2.3 to 2.12, as regards the applicant's good repute; in paragraph 2.12(c), as regards her solvency; and in paragraphs 2.13 to 2.15, as regards the Target's compliance with prudential requirements. In addition, the contested decision was adopted in a context which was known to the applicant, in that she herself notified the data relating to the proposed acquisition and was consulted during the administrative procedure prior to the adoption of that decision.

169 It follows that the contested decision specifies the relevant facts and points of law on which it is based, without it being necessary to have recourse to the separate assessment note or to the ECB's subsequent explanations.

170 An adequate statement of reasons was thus provided for that decision, it being borne in mind that the obligation to state reasons is an essential procedural requirement that is distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (judgment of 12 December 2012, *Electrabel* v *Commission*, T-332/09, EU:T:2012:672, paragraph 179).

171 In the second place, as regards the separate assessment note, the applicant claims, in essence, that it does not form an integral part of the contested decision, although it is an essential component of it, and that it was drawn up after the notification of that decision. In her view, it should not therefore be taken into account in assessing the legality of the contested decision.

172 It has been held that, in so far as the ECB's responses to proposed acquirers' comments on a draft decision had been communicated on the same day as that decision, those responses, as well as the BaFin correspondence sent to the proposed acquirers during the administrative procedure and BaFin's proposal for a decision, form part of the context of the contested decision and must be taken into account in order to assess whether the contested decision contains an adequate statement of reasons (see, to that effect, judgment of 10 July 2024, *PH and Others* v *ECB*, T-323/22, EU:T:2024:460, paragraphs 85 and 86 (not published)). The same applies, in particular, to the information available on the website of the institution in question on the date of the contested decision (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 168).

173 In the present case, the separate assessment note was sent to the applicant 10 days after notification of the contested decision.

174 Paragraph 1.12 of the contested decision refers to the separate assessment note as follows: 'the [applicant's] comments were evaluated and are addressed in a separate assessment note that was provided to the Proposed Acquirer as well as in paragraphs 1.10 and 2.10 of this Decision'. That wording does not designate the separate assessment note as an annex to the contested decision to which it is inextricably linked.

175 Despite this, the separate assessment note was expressly referred to therein. In the light of the case-law referred to in paragraph 172 above, the separate assessment note may therefore be regarded as forming part of the context of the contested decision and be taken into account in order to assess the statement of reasons for that decision.

176 It is true that the statement of reasons for a decision must, in principle, be notified to the person concerned at the same time as the decision adversely affecting him or her (see judgment of 29 September 2011, *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 149 and the case-law cited). However, in exceptional circumstances, reasons for a decision may be stated *ex post facto* (see, to that effect, judgment of 15 June 2005, *Corsica Ferries France* v *Commission*, T-349/03, EU:T:2005:221, paragraph 287).

177 In the present case, the late sending of the separate assessment note is the result of an internal clerical error within the ECB. The fact remains that the contested decision expressly refers to that note, which set out the reasons available at the time of the adoption of the contested decision, with the result that the applicant was informed of its existence as soon as the contested decision was notified and could therefore request that it be sent to her as soon as she received that decision. That is how the applicant requested access to that document on Friday 12 May 2023, that is to say, five working days after receiving the contested decision. The ECB complied promptly, sending the document to the applicant the next working day, namely Monday 15 May 2023.

178 The circumstances referred to in paragraph 177 above thus led to the separate assessment note being sent by the ECB to the applicant at a later date, however the applicant was not deprived of the opportunity to acquaint herself with it. It should also be noted that the applicant has not demonstrated, or even alleged, that the late communication of the separate assessment note adversely affected her rights (see, to that effect and by analogy, judgment of 7 April 1987, *SISMA* v *Commission*, 32/86, EU:C:1987:187, paragraph 4). In particular, she has not claimed that the late sending of that document affected her ability to bring an action within the time limit laid down in Article 263 TFEU or that that time limit should have been extended.

179 The applicant submits that the separate assessment note communicated to her was drawn up after the notification of the contested decision, as evidenced by the metadata of that document.

180 It should be noted that that claim is called into question by the evidence relied on by the ECB. The ECB explains that the metadata referred to by the applicant, assuming they are established, must result from the fact that the separate note was downloaded from the ECB's internal document storage system and converted into PDF format just before being sent to the applicant. In addition, the ECB produced a screenshot of the Word version of the separate assessment note, as saved in the abovementioned storage system. Although it is not dated, it is apparent from that screenshot that the Word version of the separate assessment note was created as early as 25 April 2023, well before the notification of the contested decision.

181 In view of these factors, it has not been shown that the separate assessment note was drawn up after the notification of the contested decision.

182 In the light of the specific circumstances of the present case, the delay in sending the separate assessment note does not preclude the information in that note from being taken into account for the purposes of the examination of the lawfulness of the contested decision.

183 In the third place, the applicant complains that the ECB supplemented the statement of reasons for the contested decision before the General Court in order to demonstrate that the proposed acquisition would lead to the acquisition of a qualifying holding in the Target and to justify its opposition to that acquisition in the light of the legal assessment criteria.

184 In that regard, it is apparent from the case-law that the statement of reasons cannot be explained for the first time *ex post facto* before the Court, save in exceptional circumstances (judgment of 18 October 2023, *Clariant and Clariant International* v *Commission*, T-590/20, EU:T:2023:650, paragraph 175).

185 Any reason put forward by the ECB for the first time before the Court, unless justified by exceptional circumstances, cannot be taken into account in assessing the statement of reasons for the contested decision, which has, in any event, been held to be sufficient, in accordance with paragraph 170 above.

186 It follows that, in its analysis of the fourth and fifth pleas, to which reference is made, the Court cannot take into consideration any new grounds not justified by exceptional circumstances.

187 Therefore, the second part of the second plea must be rejected and, accordingly, the second plea in law must be rejected in its entirety.

The third plea in law, alleging failure to examine the relevant facts and breach of the obligation to adopt the decision solely on a sufficiently solid factual basis

188 The applicant claims that the ECB failed to examine with care and impartiality the facts on which it based the contested decision and disputes the accuracy of those facts.

189 According to the applicant, the ECB was wrong to take into account the supervisory procedure relating to her husband's suitability to exercise his voting rights in the Target, conducted by BaFin in 2019. In her view, the ECB should have verified the accuracy of BaFin's findings and, in that context, taken into account the fact that her husband has not been convicted after seven years of investigation concerning suspected tax evasion and, in particular, the judgment of the Landgericht Bonn (Regional Court, Bonn, Germany) of 13 December 2022 that found that there was insufficient evidence that he intentionally participated in tax evasion.

190 The ECB's conclusions in respect of the shareholders of Warburg Gruppe acting in concert and the integration of the Targets into a corporate network were based on outdated information, even though the applicant had informed the ECB, during the administrative procedure, that the information it had was no longer up to date. The applicant adds that the joint notification of the proposed merger between Warburg Gruppe and the Target, referred to for the first time in the separate assessment note, is explained by the fact that the shareholders of Warburg Gruppe are acting in concert for the purposes of that specific transaction, but does not demonstrate that, in general, they act in concert. She also maintains that the 2021 SREP decision did not take into account the prudential measures to be implemented by the Target and that the 2022 SREP decision had not yet been adopted when the contested decision was issued.

191 The ECB rejects the applicant's claims.

192 As a preliminary point, it is important to note that the contested decision is a measure relating to the prudential supervision of a credit institution, adopted by the ECB, which has a broad discretion in that regard since, as stated in recital 55 of the SSM Regulation, the conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the European Union, and to use its supervisory powers in the most effective and proportionate way (see, to that effect, judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 86).

193 The ECB's broad discretion also results from the fact that the contested decision involves the assessment of complex economic and financial facts and circumstances (see, to that effect and by analogy, judgments of 10 November 2022, *Commission* v *Valencia Club de Fútbol*, C-211/20 P, EU:C:2022:862, paragraph 34, and of 22 June 2023, *Germany and Estonia* v *Pharma Mar and Commission*, C-6/21 P and C-16/21 P, EU:C:2023:502, paragraph 52).

194 In those circumstances, the judicial review which the EU judicature must carry out of the merits of the grounds of a decision such as the contested decision must not lead it to substitute its own assessment for that of the ECB, but seeks to ascertain that that decision is not based on materially incorrect facts and that it is not vitiated by an error of law, a manifest error of assessment or misuse of powers (see, to that effect, judgments of 2 September 2021, *EPSU* v *Commission*, C-928/19 P, EU:C:2021:656, paragraph 96, and of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 55).

195 The EU judicature must, inter alia, establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (judgment of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 56).

196 Where an institution enjoys broad discretion, observance of procedural guarantees is of fundamental importance, including the obligation for that institution to examine carefully and impartially all the relevant aspects of the situation in question (judgment of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 57).

197 In the present case, the applicant, first, disputes the accuracy of the facts taken into account by the ECB in order to examine the repute of her husband and, second, claims that, with regard to the Warburg Gruppe's shareholders acting in concert and the integration of the Targets into a corporate network, the ECB relied on outdated information.

198 As regards the applicant's first complaint, the contested decision states that, because of the reassessment procedure conducted by BaFin in 2019 with regard to the applicant's husband, the ECB has 'very serious doubts' as to the latter's good repute.

199 In the context of that procedure conducted in 2019, BaFin had intended to impose prudential measures on the applicant's husband, with the objective of limiting his influence over the Target, but did not do this in view of the commitments he made. By not imposing those measures, BaFin did not call into question its analysis concerning the influence of the applicant's husband on the Target.

200 As the ECB also submits in the contested decision, BaFin's wish to maintain the solution, referred to in paragraph 9 above, of delegating MWB 1's voting rights in Warburg Gruppe to two proxies, including after the possible implementation of the proposed acquisition, confirms that BaFin remained consistent in its analysis vis-à-vis the applicant's husband, including during the assessment period.

201 In paragraph 1.8 of the contested decision, it is also stated, as a reminder of the facts, that the 2021 SREP decision adopted by BaFin also found that the indirect owners of the Target were unsuitable and that they continued to exert influence over the Target, despite the fulfilment of the commitments entered into by the applicant's husband with BaFin. The Target was thus awarded a score of 4 (corresponding to the lowest score that could be awarded in that context). That SREP decision, which became final in the absence of an appeal, supports the finding that the applicant's husband was not of good repute. As the ECB explains in its written pleadings, that decision resulted from the most recent prudential assessment of the Target available during the assessment phase.

202 The applicant is of the view, however, that those assessments are based on facts which are outdated, on the ground that the judgment of the Landgericht Bonn (Regional Court, Bonn), delivered on 13 December 2022, concluded that there was insufficient evidence to establish that her husband had deliberately participated in the tax evasion which gave rise to the reassessment procedure conducted by BaFin in 2019.

203 As the ECB submits in its written pleadings and in the separate assessment note, first, the judgment referred to in paragraph 202 above concerned the guilt of a third party and not that of the applicant's husband and, second, the criminal investigation concerning the latter was still pending, a fact which the applicant had not denied.

204 It should also be noted that the assessment of the criminal liability of an individual in the context of judicial proceedings is not of the same nature as the assessment of the reputation of a proposed acquirer in the context of an administrative procedure relating to banking supervision, such as that at issue in the present case. Consequently, the judgment of the Landgericht Bonn (Regional Court, Bonn), delivered on 13 December 2022 in the context of criminal proceedings, cannot in any event invalidate the assessment made by BaFin and the ECB as to the reputation of the applicant's husband.

205 In view of the above, the applicant's allegations are not sufficient to contest the accuracy of the facts taken into account by the ECB in its assessment of her husband's reputation.

206 The first complaint of the applicant's third plea is therefore rejected.

207 As regards the second complaint, by which the applicant claims that the ECB relied on outdated information as regards the integration of the Targets into a corporate network and the acting in concert between Warburg Gruppe's shareholders, it must be stated that the applicant does not specify what relevant information, filed with her action, should be taken into consideration, if indeed the matters relied on by the ECB in the contested decision are obsolete.

208 In addition, in the context of that complaint, the applicant refers to the arguments put forward in respect of the fourth plea, as regards the acting in concert between the shareholders of Warburg Gruppe found to exist by the ECB in the contested decision.

209 Therefore, it is necessary to reject the applicant's claims concerning the integration of the Targets into a corporate network and to examine those relating to the acting in concert between Warburg Gruppe's shareholders in the context of the fourth plea in law.

210 It follows from the foregoing that the second complaint of the third plea in law must be rejected, and, accordingly, the third plea in law must be rejected in its entirety.

The fourth plea in law, alleging incorrect interpretation and application by the ECB of the concept of a 'qualifying holding'

211 The applicant denies that she would acquire a qualifying holding in the Target, both in terms of voting rights and capital.

212 By the first part of her fourth plea, the applicant disputes the acquisition of a qualifying holding in terms of voting rights.

213 The applicant takes the view that she could acquire a qualifying holding only indirectly, if the voting rights at the level of MWB 1 and Warburg Gruppe were attributed to her. However, MWB 1 does not control Warburg Gruppe either individually or jointly through acting in concert with the other shareholders of Warburg Gruppe.

214 The ECB arbitrarily assumed that MWB 1 and the other shareholders of Warburg Gruppe would act in concert, since there was no factual information to support such a conclusion in the contested decision. The information cited in the separate assessment note in support of the finding of acting in concert is outdated, erroneous or irrelevant, whether it concerns the Warburg Gruppe shareholder agreement, the alleged family relationships between the Warburg Gruppe shareholders, the relationships between the companies within the Warburg group, the Warburg Gruppe shareholders' sources of financing or their past voting patterns. Those facts cannot therefore establish acting in concert on the part of the Warburg Gruppe shareholders.

215 The ECB disputes the applicant's claims.

216 As a preliminary point, it should be borne in mind that point 36 of Article 4(1) of 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), to which point 33 of Article 3(1) of the CRD IV Directive refers, defines a qualifying holding as a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking.

217 The concept of 'acquisition of a qualifying holding' in a credit institution is an autonomous concept of EU law. This is apparent from the fact that no reference to national law is contained in the definition of 'qualifying holding' in point 36 of Article 4(1) of Regulation No 575/2013, in Article 15 of the SSM Regulation or in Article 22 of the CRD IV Directive laying down the mechanism for reviewing the acquisition of such a holding. This is also apparent from the objective pursued by the EU legislature, as follows from, inter alia, recital 11 and Article 1 of the SSM Regulation, to establish harmonised prudential oversight of the financial system, particularly, as set out in recital 22 of that regulation, significant – that is to say, 'qualifying' – holdings in credit institutions (judgment of 19 September 2024, *Fininvest and Berlusconi* v *ECB*, C-512/22 P and C-513/22 P, EU:C:2024:774, paragraph 48).

218 Against that background, the concept of 'acquisition of a qualifying holding' cannot be interpreted restrictively, otherwise it would be possible to circumvent the assessment procedure by removing certain methods of acquisition of qualifying holdings from the ECB's control and, therefore, to undermine the objectives pursued. In this respect, it must also be borne in mind that it is apparent from recital 22 of the SSM Regulation that an assessment of the suitability of any new owner prior to the purchase of a qualified holding in a credit institution is an indispensable tool for ensuring the continuous suitability and financial soundness of owners of those institutions.

219 In the present case, paragraph 2.1 of the contested decision states that the proposed acquisition would lead to the applicant acquiring 100% of the voting rights in the Target, referring, inter alia, to the second sentence of Paragraph 1(9) of the KWG, as interpreted in the light of the Joint Guidelines.

220 As noted in paragraph 192 above, the ECB has broad discretion in the exercise of its prudential supervisory tasks, which include its task of monitoring the acquisition of qualifying holdings.

221 Consequently, the Court must, in the present case, verify that the contested decision, in so far as it finds that Warburg Gruppe's shareholders are acting in concert, is not based on materially incorrect facts and that it is not vitiated by a manifest error of assessment, as the applicant alleges.

222 In that respect, it is for the applicant, inter alia, to adduce sufficient evidence to render implausible the factual assessments used in the contested EU measure, in order to establish that the institution which adopted the act committed a manifest error of assessment such as to justify the annulment of that act (see, to that effect and by analogy, judgment of 11 September 2014, *Gold East Paper and Gold Huasheng Paper* v *Council*, T-444/11, EU:T:2014:773, paragraph 62).

223 In the present case, in the contested decision, the ECB states that Warburg Gruppe's shareholders are acting in concert and that together they indirectly hold 100% of the shares in the capital of the Target and of the voting rights in it. It adds that, as a result of the pooling agreement, it is also presumed that there is acting in concert at the level of MWB 1. The ECB concludes that the applicant will acquire 100% of the shares and voting rights in the Target, which she will be able to control indirectly.

224 The separate assessment note examines the criteria listed in Paragraph 4.6 of the Joint Guidelines for the purpose of determining the existence of acting in concert, before concluding that, in view of that acting in concert, the voting rights must be attributed to the proposed acquirer in full. In that regard, account is taken of the agreement concluded between the shareholders of Warburg Gruppe, the relationships within the Target group, the sources of financing of Warburg Gruppe's shareholders and the past voting patterns of those shareholders.

225 The applicant disputes the finding that MWB 1 and the other co-shareholders of Warburg Gruppe are acting in concert. She argues in that regard that the factors mentioned in the separate assessment note do not support such a finding.

226 As regards the shareholders' agreement concluded at Warburg Gruppe level, the applicant claims that it was no longer in force when the contested decision was adopted, owing to the adoption of new articles of association in 2021. In addition, paragraph 4.6 of the Joint Guidelines expressly provides that such sale restrictions are insufficient to establish acting in concert.

227 However, as the ECB submits, the analysis which it set out in the separate assessment note is not obsolete, since Warburg Gruppe's new articles of association provide, like the shareholders' agreement referred to in paragraph 226 above, that the transfer of shares to persons outside the shareholder families must require the prior consent of the 'company' by means of a decision of the general meeting.

228 The applicant's claims are therefore not capable, first, of establishing that the ECB's decision is based on incorrect facts or, second, of rendering the assessment of those facts implausible.

229 Furthermore, as the ECB submits, paragraph 4.6 of the Joint Guidelines does not exclude that type of agreement from its scope, but does exclude pure share purchase agreements, tag along and drag along agreements and pure statutory pre-emption rights.

230 As regards the ECB's assertion that two other members of the applicant's husband's family held shares in Warburg Gruppe, the applicant argues that those members, who were very distant relatives with whom she does not maintain contact, had holdings of only 0.58% which, combined with MWB 1, did not in any event enable her to hold more than 50% of Warburg Gruppe's capital.

231 It must be noted that, by those allegations, the applicant does not deny the facts relied on by the ECB, namely that two other members of the Warburg family hold shares in Warburg Gruppe. Nor does she submit any evidence that would call into question the ECB's assessment of those family relationships.

232 As regards the relationships between the companies of the same group, the ECB explained, in the separate assessment note, that the applicant's husband and A represent a foundation which bears both of their names. They were also managing directors of MWB 1's main co-shareholder in Warburg Gruppe and of MWB 1. The applicant's husband, A, MWB 1 and MWB 1's main co-shareholder in Warburg Gruppe also have the same legal representatives.

233 The applicant maintains that the foundation referred to in paragraph 232 above is a charitable foundation which held 0.02% of the capital of Warburg Gruppe until February 2022 only, with the result that it cannot be taken into account in the context of relationships between the companies in the same group.

234 It must be noted that the applicant does not call into question the facts set out by the ECB, since that foundation's shareholding in Warburg Gruppe is not among the factors taken into account by the ECB. Those allegations are not sufficient to render implausible the ECB's determination that the relationship between the applicant's husband and A may be taken into consideration in respect of relationships between undertakings within the meaning of paragraph 4.6(b)(3) of the Joint Guidelines. As regards the consideration of a single source of financing, the ECB states that Warburg Gruppe's co-shareholders, in the past, agreed to finance the acquisition of Target Hyp by a special distribution of retained profits.

235 The applicant claims that, where the Joint Guidelines provide that the use of the same source of financing may constitute an indication of acting in concert, what is meant is external sources of financing, and not internal sources such as the dividends distributed by the Target.

236 As the ECB rightly points out, that assertion is not supported by paragraph 4.6(b)(4) of the Joint Guidelines, according to which 'the use by different persons of the same source of finance for the acquisition or increase of holdings in the target undertaking' is an indicator of acting in concert; no distinction is made between 'external' and 'internal' sources.

237 It follows that the applicant's arguments in that regard must be rejected.

238 As regards past voting patterns, it is stated in the separate assessment note that BaFin examined past shareholder resolutions, which did not show any indication of voting differently. That note states that complex resolutions were approved unanimously, without prior in-depth discussion and within very short time frames, which implies prior agreement on voting patterns. Minority shareholders were also often represented.

239 The applicant submits that she is unaware of the past voting patterns referred to by the ECB, in which she did not participate, and that she does not intend to coordinate her voting with the other shareholders of Warburg Gruppe. She adds that the ECB relies on pure speculation and that it is not her task to adduce evidence of the negative, that is to say, evidence that the reasons for the decision are not well founded.

240 It must be noted that the applicant has not produced evidence contradicting the ECB's position, such as examples of resolutions adopted by Warburg Gruppe's shareholders in an uncoordinated manner. Nor has she justified why she was unable to produce such evidence.

241 Furthermore, as regards the applicant's intentions, it is apparent from a letter from the applicant dated 29 September 2022, cited in the reply, that she does not intend to refrain from asking her husband, the former main shareholder of MWB 1, for advice, in the same way as she would listen to other advice. In the same letter, she also stated that she regularly communicated with the proxies exercising MWB 1's voting rights in Warburg Gruppe.

242 It follows that the applicant's claims are not such as to call into question the facts relied on by the ECB or to render the ECB's assessment implausible.

243 Consequently, the ECB found, on the basis of relevant evidence, that there was acting in concert between MWB 1 and the other shareholders of Warburg Gruppe, and did not commit a manifest error of assessment. It follows that the applicant's argument must be rejected, as must the first part of the fourth plea in its entirety.

244 Accordingly, the applicant's challenge to the acquisition of a qualifying holding in terms of voting rights is rejected. Since the acquisition of voting rights and capital rights are referred to in the alternative by Article 22(1) of the CRD IV Directive and point 36 of Article 4(1) of Regulation No 575/2013 in order to establish the acquisition of a qualifying holding, it is not necessary to examine the second part of the fourth plea, which concerns the acquisition of a qualifying holding in terms of shares in the capital, or the questions regarding the compatibility of German law and paragraph 6.6 of the Joint Guidelines with the applicable EU legal framework.

245 The fourth plea in law is therefore rejected.

The fifth plea in law, alleging misinterpretation and misapplication by the ECB of the criteria for assessing the proposed acquirer

246 The applicant subdivided her fifth plea into three parts, alleging misinterpretation and misapplication of the criterion relating to the 'reputation of the proposed acquirer', of the concept of the 'financial soundness of the proposed acquirer' and of the concept of 'compliance with prudential requirements'.

247 As regards the first part, alleging misinterpretation and misapplication of the criterion relating to the 'reputation of the proposed acquirer', the applicant claims that the contested decision, in so far as it finds that the reputation criterion is not satisfied, infringes Article 23(1) and (2) of the CRD IV Directive and its transposition into German law by point 1 of the first sentence of Paragraph 2c(1b) of the KWG. Moreover, in her view, the contested decision is not based on reliable evidence or on reasonable grounds and reflects a manifest error of assessment on the part of the ECB.

248 As a preliminary point, it must be borne in mind that Article 23(1) of the CRD IV Directive provides that the competent authorities must, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with a non-exhaustive list of criteria. Those criteria include the criterion relating to the reputation of the proposed acquirer.

249 The criterion relating to the reputation of the proposed acquirer laid down in Article 23 of the CRD IV Directive is transposed into German law by point 1 of the first sentence of Paragraph 2c(1b) of the KWG. That provision provides, more specifically, that an acquisition may be prohibited if 'the person subject to the notification obligation … is not trustworthy or for any other reason does not meet the requirements necessary to ensure the sound and prudent management of the institution'.

250 By her first complaint, the applicant claims that the professional competence of the proposed acquirer is not a reputation criterion under Paragraph 2c(1b) of the KWG. She adds that any interpretation to the contrary infringes Article 22(8) of the CRD IV Directive, which provides that Member States may not impose requirements that are more stringent than those set out in that directive. Lastly, the applicant submits that paragraph 10.1 of the Joint Guidelines, which refers to professional competence as a criterion for assessing the reputation of proposed acquirers, is inapplicable, since it conflicts with Paragraph 2c(1b) of the KWG.

251 In that regard, it should be noted that neither Article 23(1) of the CRD IV Directive nor point 1 of the first sentence of Paragraph 2c(1b) of the KWG contains a definition of the criterion of good repute or a list of conduct liable to fall within the scope of that concept. This requires the competent authorities to examine, on a case-by-case basis, whether that criterion of good repute is met by a shareholder seeking to acquire a qualifying holding in a credit institution, taking into account the relevant facts, the reasons underlying the criterion and the objectives which that criterion is intended to secure.

252 In accordance with settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (see, to that effect, judgment of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited).

253 To be of 'good repute', according to its usual meaning, means being 'worthy of esteem' or being 'known to be respectable'. Such a definition, which refers in particular to public opinion, does not preclude a person's good repute from being dependant on his or her professional competence (judgment of 10 July 2024, *PH and Others* v *ECB*, T-323/22, EU:T:2024:460, paragraph 363).

254 As regards the context of that criterion, it should be borne in mind that recital 8 of Directive 2007/44 states that the 'reputation of the proposed acquirer' must take into account not only the integrity of the proposed acquirer, but also his or her professional competence. That recital is relevant in this case because Article 5(3) of Directive 2007/44 inserted Article 19a(1) into Directive 2006/48, which subsequently became Article 23(1) of the CRD IV Directive. That dual assessment of integrity and professional competence makes it possible to pursue the objectives set out in Article 23(1) of the CRD IV Directive, namely to assess the suitability of the proposed acquirer, in order to ensure the sound and prudent management of the credit institution.

255 Paragraph 10.1 of the Joint Guidelines also explains that the assessment of the reputation of the proposed acquirer should cover his or her integrity and professional competence.

256 Accordingly, the reputation criterion referred to in Article 23(1) of the CRD IV Directive must be interpreted as including an assessment of the professional competence of the proposed acquirer (judgment of 10 July 2024, *PH and Others* v *ECB*, T-323/22, EU:T:2024:460, paragraph 368).

257 It follows that the dual assessment made by the ECB in the contested decision is consistent with the legal framework applicable in the present case.

258 The fact that the KWG does not explicitly mention this criterion does not mean that the ECB erred in law by carrying out a dual assessment of the applicant's professional competence and her integrity.

259 Indeed, it is settled case-law that when national courts apply domestic law they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the relevant directive in order to achieve the result sought by that directive. This obligation to interpret national law in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them (see judgments of 19 January 2010, *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 48 and the case-law cited, and of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 24 and the case-law cited; see also, by analogy, judgment of 24 June 2019, *Popławski*, C-573/17, EU:C:2019:530, paragraphs 55, 57 and 58). The same obligation applies in principle, under the provisions of the first subparagraph of Article 4(3) of the SSM Regulation, to the ECB and, when reviewing the legality of its action, to the General Court, which must interpret and apply, as far as possible, the domestic law transposing a directive in a manner consistent with that directive (see, to that effect, judgment of 15 July 2025, *ECB and Commission* v *Corneli*, C-777/22 P and C-789/22 P, EU:C:2025:580, paragraphs 135 and 137).

260 Interpreted in that way, the KWG does not conflict with the Joint Guidelines. The wording of point 1 of the first sentence of Paragraph 2c(1b) of the KWG does not preclude the proposed acquirer's professional competence from being taken into consideration in the examination of his or her reputation (judgment of 10 July 2024, *PH and Others* v *ECB*, T-323/22, EU:T:2024:460, paragraph 367). It follows that the applicant's first complaint must be rejected.

261 By her second complaint, the applicant disputes the ECB's assessment of her professional competence.

262 As a preliminary point, it should be borne in mind that the contested decision is a measure relating to the prudential supervision of a credit institution adopted by the ECB, which has a broad discretion in that regard, and that the judicial review which the EU judicature must carry out of the merits of the grounds of a decision such as the contested decision seeks, inter alia, to ascertain that that decision is not based on materially incorrect facts and that it is not vitiated by an error of law or a manifest error of assessment (see paragraphs 192 and 194 above).

263 It is apparent from paragraph 2.12(i) to (v) of the contested decision that the applicant does not satisfy the criterion relating to professional competence, in the form envisaged by the ECB of an acquisition of control of the Target.

264 The Joint Guidelines specify what the professional competence criterion covers.

265 According to paragraph 10.3 of the Joint Guidelines, the assessment of professional competence should take into account the influence that the proposed acquirer will exercise over the target undertaking. This means that, in accordance with the principle of proportionality, the competence requirements are reduced for proposed acquirers who are not in a position to exercise, or who undertake not to exercise, significant influence over the target undertaking.

266 According to paragraph 10.23 of the Joint Guidelines, the professional competence of the proposed acquirer covers competence in management ('the management competence') and in the area of the financial activities carried out by the target undertaking ('the technical competence').

267 Paragraph 10.24 of the Joint Guidelines states, moreover, that the management competence may be based on the proposed acquirer's previous experience in acquiring and managing holdings in companies, and should demonstrate due skill, care, diligence and compliance with the relevant standards.

268 Paragraph 10.25 of the Joint Guidelines states that the technical competence may be based on the proposed acquirer's previous experience in operating and managing financial institutions as a controlling shareholder or as a person who effectively directs the business of a financial firm.

269 Paragraph 10.29 of the Joint Guidelines states that, in cases of significant influence, the need for technical competence will be greater.

270 In the present case, the contested decision sets out the criteria used to analyse the applicant's professional competence. Reference is thus made to management competence and technical competence as well as their definitions (paragraph 2.12(ii) of the contested decision) and the fact that, should there be significant influence, the need for technical competence will be greater (paragraph 2.12(iii) of the contested decision).

271 It is apparent from paragraph 1.10 of the contested decision that the applicant completed university studies and a PhD in business administration, and has 13 years' professional experience in real estate, interrupted in 2006 for family reasons. Since 2014, she has worked on a voluntary basis for charitable organisations, but has no professional experience in the banking industry.

272 In paragraph 2.12(iv) of the contested decision, the ECB states, inter alia, that the applicant does not have the professional competence required for someone acquiring a controlling qualifying holding in a credit institution. She has no experience in the banking and financial sector, which is highly regulated, has not had any professional experience in the last 16 years and has not provided evidence that she has the skills required to carry out an activity involving acquiring and managing holdings.

273 In paragraph 2.12(v) of the contested decision, the ECB also states that the applicant's lack of professional competence remains problematic despite the presence of two proxies responsible for exercising MWB 1's voting rights in Warburg Gruppe. Although BaFin intends, for the time being, to keep those proxies in place, even if the proposed acquisition takes place, the ECB points out that the applicant intends to take over her husband's entire shareholding in MWB 1 and that, in such a situation, it cannot be guaranteed that the proxies will be maintained.

274 The applicant submits that the ECB cannot find that she would acquire control of the Target and consequently require increased technical skills. If it is not to discriminate, the ECB cannot take the view that the applicant is not capable of managing her holding with the support of the management board, the supervisory board and external advisers.

275 It must be noted that the applicant does not contest the facts regarding her competences, set out by the ECB.

276 The applicant disputes the standard applied by the ECB, being of the view that she would not acquire control of the Target.

277 However, the ECB found that the applicant would acquire a controlling qualifying holding in the Target, an assessment that is not vitiated by a manifest error. It was on that basis that it took into account, in paragraph 2.12(iii) of the contested decision, the fact that, in cases of an acquisition of control, the need for technical competence is greater, without, however, being equivalent to that required from a managing director of a credit institution. It notes, accordingly, that a qualifying shareholder, who will not be responsible for the day-to-day management of a credit institution, must have adequate knowledge of the legal rights and obligations of a controlling shareholder in a credit institution under company law and banking supervision law.

278 It follows that the level of competence required by the ECB is not incorrect, having regard to the applicable legal framework, interpreted in the light of the Joint Guidelines.

279 Nor did the ECB make a manifest error of assessment when it considered that the applicant, despite her past studies and professional experience, did not have the required level of competence, particularly in view of her professional inactivity over the last 16 years and the fact that she had never been active in the banking sector.

280 The applicant's second complaint must therefore be rejected.

281 Since the applicant's arguments seeking to invalidate the ECB's assessment of her professional competence have been rejected, the ECB's conclusion as to her reputation remains valid, irrespective of the Court's response to her complaints concerning the criterion of integrity. However, for the purposes of the proper administration of justice, the Court considers it appropriate to examine the criterion relating to the applicant's integrity.

282 By her third complaint, the applicant challenges the contested decision in so far as it finds that she does not satisfy the integrity criterion. She submits in that regard that the assessment of her integrity must be carried out in the light of her past conduct, and not the past conduct of her husband, and she disputes the conclusion concerning the influence which her husband has on her. The criterion relating to reputation, laid down in Article 23 of the CRD IV Directive, is transposed into German law by point 1 of the first sentence of Paragraph 2c(1b) of the KWG (see paragraphs 248 and 249 above).

283 According to paragraph 10.10 of the Joint Guidelines, integrity requirements imply, but are not limited to, the absence of 'negative records'.

284 Paragraph 10.13 of the Joint Guidelines specifies the factors which should particularly be taken into account, including any conviction or prosecution for a criminal offence (in particular any offences under the laws governing banking, financial, securities and insurance activities, or concerning securities markets or payment instruments; any offences of dishonesty, fraud or financial crime, including money laundering and terrorist financing, market manipulation, insider trading, usury and corruption; any tax offences; any other offences under legislation relating to companies, bankruptcy, insolvency or consumer protection), any relevant findings from on-site and off-site controls, from investigations or enforcement actions, to the extent that they relate to the proposed acquirer either directly or indirectly, any relevant enforcement actions by any other regulatory or professional bodies for non-compliance with any relevant provisions, and any other information from credible and reliable sources that is relevant in this context.

285 Paragraph 10.14 of the Joint Guidelines specifies that competent authorities should not consider that the absence of a criminal conviction or prosecution, administrative and enforcement action constitutes in and of itself sufficient evidence of a proposed acquirer's integrity, in particular where allegations of criminal conduct persist.

286 Point 1 of the first sentence of Paragraph 2c(1b) of the KWG allows an acquisition of a qualifying holding to be prohibited if a proposed acquirer 'for any other reason [than not being trustworthy] does not meet the requirements necessary to ensure the sound and prudent management of the institution'.

287 As is apparent from recital 22 of the SSM Regulation and Article 23(1) of the CRD IV Directive, the assessment of the reputation of the shareholders of credit institutions aims to ensure the sound and prudent management of those institutions, the continuous suitability and financial soundness of owners of credit institutions and, thus, to ensure the preservation and stability of the financial system within the European Union and in each Member State.

288 It must also be pointed out that any assessment based on Article 23 of the CRD IV Directive is prospective (see, by analogy, judgment of 7 December 2022, *PNB Banka* v *ECB*, T-330/19, EU:T:2022:775, paragraph 114) and must make it possible to prevent threats to the soundness of credit institutions and, more broadly, to the financial system within the European Union and in each Member State from materialising.

289 In that legislative context, paragraph 10.21 of the Joint Guidelines emphasises that the competent authority may take into consideration the integrity and reputation of any person linked to the proposed acquirer, meaning any person who has, or appears to have, a close family or business relationship with the proposed acquirer. Lastly, it is apparent from the case-law that the CRD IV Directive, as transposed into German law, does not preclude the proposed acquirer's lack of good repute from resulting from the latter's relations with a third party. It is possible that a proposed acquirer's choice of professional or personal relationships may give rise to doubts as to his or her integrity and have negative consequences on the objective of the sound and prudent management of the credit institution concerned, as the Court recently held (judgment of 10 July 2024, *PH and Others* v *ECB*, T-323/22, EU:T:2024:460, paragraphs 325 and 326 (not published)).

290 It is in the light of that legal framework that it is necessary to determine whether the ECB committed an error of law or a manifest error of assessment in its analysis of the applicant's integrity.

291 In the present case, it is apparent from paragraph 2.6 of the contested decision that the ECB, after setting out the provisions on which it based its assessment, stated that qualifying holding procedures served to ensure the sound management of institutions and overall financial stability. Unsound management of credit institutions may create financial instability and have a more severe impact on financial markets and beyond. The risks involved in banking activities need to be handled prudently and thus require higher standards as regards the suitability of qualifying shareholders. According to the ECB, the purpose of the qualifying holding procedure is to ensure that only suitable shareholders can exert material influence on the management of a bank and, therefore, they must be assessed against the relevant criteria. Allowing an unsuitable third party to exercise influence justifies the conclusion that the proposed acquirer him or herself is unwilling or unable to set the right preconditions for a sound and prudent management of the target.

292 The ECB also notes, in paragraph 2.7 of the contested decision, that the assessment of the reputation of the proposed acquirer is an *ex ante* assessment and necessarily requires a prediction of the future conduct of the proposed acquirer. Facts must indicate an abstract risk, that is to say, the likelihood of an intended breach.

293 On the basis of those considerations, the ECB stated, in paragraph 2.8 of the contested decision, first, that the applicant's husband had been subject to a reassessment by BaFin in 2019, which led the ECB to have very serious doubts about his reputation, second, that the applicant appeared to be financially dependent on her husband, third, that she had no banking experience and, fourth, that she had openly admitted also to seeking the advice of her husband, with whom she would be part of a pooling agreement. The ECB infers from this that there are serious concerns that, following the proposed acquisition, the applicant's husband, who does not have a good reputation, will exert material influence over the Target, through the applicant.

294 In the first place, the applicant claims that, in order to assess the integrity criterion, account must be taken of the past behaviour of the proposed acquirer. A family connection with a person whose good repute is disputed is not sufficient to justify the application of measures irrespective of the personal conduct of the person concerned. The ECB adopted the contested decision taking into account only the reputation of the applicant's husband, without seeking to assess the applicant individually.

295 The applicant rejects the ECB's assessment that she is financially dependent on her husband, since such an assessment is incorrect. The fact of consulting her husband does not mean that the applicant cannot take decisions independently, in accordance with the law and moral principles. She argues that the ECB was also wrong to disregard both her husband's intention to retire and her stated intention to act independently.

296 As regards the applicant's arguments concerning the possibility of taking into consideration the reputation of her husband, it should be noted that, on the basis of the Joint Guidelines and the case-law cited in paragraph 289 above, the ECB may take into consideration, when assessing the reputation of a proposed acquirer, the integrity and reputation of a person who has a close family relationship with that proposed acquirer, such as, in the present case, the applicant's husband.

297 It follows that the analysis concerning the reputation of the applicant's husband may form part of the assessment of the applicant's integrity. Her arguments seeking to establish the contrary must therefore be rejected.

298 As regards the applicant's arguments seeking to establish that the marital relationship between her and her husband does not mean that her husband has an influence on her, the following should be noted.

299 First, the close family relationship is explicitly mentioned in the Joint Guidelines, in paragraph 10.21, as a factor that can be used to define the persons whose integrity and reputation may be taken into account for the assessment of the proposed acquirer.

300 The applicant does not deny that relationship, nor does she claim that it does not constitute a close relationship within the meaning of the Joint Guidelines.

301 Second, the ECB relied on circumstances that were not limited solely to the marital relationship between the applicant and her husband.

302 Paragraph 2.10 of the contested decision states that the applicant is expected to acquire only 0.01% of the capital of MWB 1 and will not therefore participate in its commercial success. The applicant's husband, who holds 12.49% of the capital of MWB 1 and has an usufruct over FMWV's 87.5% shareholding in MWB 1, will receive any distributed profits. It is clear from the same paragraph that the applicant has no regular income. Apart from cash stemming from the sale of a property, a large part of her net worth comes from a participation financed by a company the managing director of which is her husband.

303 The ECB considers that that financial connection, together with the applicant's lack of regular income, indicates that she is financially dependent on her husband. It adds that there is nothing to indicate that the applicant's financial situation could change in the future should, for example, additional capital contributions be necessary. Lastly, it adds that it can be assumed that the person providing the financial resources would also seek to retain influence over the decisions taken in relation to that investment. According to the ECB, those reasons give rise to serious doubts as to whether the applicant's husband would refrain from attempting to influence her on how to exercise her voting rights.

304 In paragraph 2.11 of the contested decision, the ECB states that the applicant expressed her intention to take into account her husband's advice. It also points out that the applicant, although well educated, has not worked for the past 16 years, does not have any banking

experience and has not previously been involved in the management of the Target or as a shareholder of the Target. Lastly, it takes the view that the applicant's husband will seek to influence the applicant during discussions in the context of the pooling agreement, which the applicant was to join following the proposed acquisition, considering the interest he retains in the Target and the applicant's lack of banking experience.

305 In paragraph 2.12 of the contested decision, the ECB takes the view that the presence of the proxies does not lead to a different conclusion. Those proxies exercise the voting rights in Warburg Gruppe on a contractual basis but are neither the legal owners nor the economic owners of the shares in question. The legal and economic owner of those shares remains MWB 1, which will be controlled by the applicant. In addition, the ECB states that one of those two proxies was appointed sole managing director of MWB 1 by the applicant's husband, to whom he reports exclusively. The independence of that proxy vis-à-vis the applicant's husband in the exercise of MWB 1's voting rights in Warburg Gruppe is therefore not guaranteed.

306 Third, the applicant claims that she is not dependent on her husband because she has personal assets and could easily find a job.

307 It must be noted that these claims seek to establish that she would be able to support herself.

308 However, the ECB's analysis in the contested decision seeks to establish that the applicant is dependent on her husband to provide additional capital to the Target. That analysis is not put in question by the applicant.

309 Those arguments must therefore be rejected.

310 Moreover, the applicant claims that she will not seek the opinion of only her husband and that she will be able to take autonomous decisions. She claims that the ECB distorted the statements she made during the administrative phase concerning her intention to consult her husband, which she cited in her reply.

311 It must be stated that the applicant does not put in question the facts set out by the ECB or its conclusions when she claims, first, that conversations in the context of the pooling agreement did not show 'undue influence', next, that there was no evidence that she would not operate MWB 1 and its voting rights in Warburg Gruppe in accordance with the law, prudential requirements and moral principles and, lastly, that her husband intended to retire in view of his advanced age.

312 Nor do the applicant's statements during the administrative phase invalidate the ECB's analysis, since it is apparent from those statements that the applicant did not rule out the possibility of seeking advice from her husband; she merely expressed her intention to listen also to the other stakeholders in order to form an opinion.

313 The applicant's argument that the ECB distorted BaFin's finding that the independence of the proxies is not in question, even if it were well founded, cannot invalidate the ECB's reasoning regarding the influence of the applicant's husband on the applicant. In any event, as the ECB submits, the appointment of those two proxies might not be maintained indefinitely, in particular if the applicant were to acquire her husband's entire shareholding in MWB 1, as is her intention.

314 Therefore, the applicant's arguments in that regard should be rejected.

315 In the second place, the applicant submits that the ECB's serious doubts as to the good repute of her husband are not relevant and relies on the presumption of innocence, under which a mere indictment cannot call into question the good repute of a proposed acquirer. A determination that a proposed acquirer has a bad reputation should be based on concrete evidence. The ECB took into account a mere criminal investigation against her husband which, moreover, did not result in a conviction.

316 In her view, the contested decision is also based on outdated information gathered by BaFin in 2019, without taking into account the prudential assessment carried out by BaFin in 2022.

317 In the present case, paragraph 2.8 of the contested decision states that the applicant's husband was subject to a reassessment by BaFin in 2019.

318 The contested decision explains, in paragraph 1.7 thereof, that, in 2019, BaFin initiated a supervisory procedure in order to suspend the voting rights of the applicant's husband in the Target, on account of his responsibility for that company's involvement in 'com/ex' transactions between 2007 and 2011. BaFin assessed, as part of its ongoing supervision, the involvement of the applicant's husband and A in the Target's alleged involvement in those transactions. It considered that they were of bad repute and, in 2019, prepared supervisory measures to withdraw their mandates to sit on the supervisory board of the Target and to limit their influence on the Target, including by suspending their voting rights in Warburg Gruppe, which were entrusted to the proxies. During the hearing period, the applicant's husband and A agreed to resign voluntarily from their positions as members of the supervisory board of the Target and appointed proxies to exercise their voting rights in Warburg Gruppe. BaFin considered that the appointment of these proxies was sufficient to limit the influence of these two main indirect shareholders of the Target and did not proceed with implementing the aforementioned supervisory measures.

319 In paragraph 1.8 of the contested decision, it is also stated that the 2021 SREP decision adopted by BaFin found that the indirect owners of the Target were unsuitable and that they continued to exert influence over the Target, despite the appointment of the proxies. In addition, in the context of that assessment, it was considered that there was evidence to justify the assumption that the inclusion of the Target in a group of companies connected to the applicant's husband and A had hindered effective supervision in the past, with reference being made to conflicts of interest, suspicious activities within the group of companies and the risk of potential concentration.

320 It is apparent from the analysis of the contested decision that the ECB took into account relevant facts, having regard to Article 23(1) of the CRD IV Directive, point 1 of the first sentence of Paragraph 2c(1b) of the KWG and the Joint Guidelines. The contested decision in fact refers to 'negative records' concerning the applicant's husband, within the meaning of paragraph 10.10 of those guidelines.

321 The applicant's arguments are not such as to call into question the ECB's assessment in that regard.

322 First, the applicant relies on the presumption of innocence and claims that a mere criminal investigation, which did not result in a conviction, is not sufficient to conclude that her husband was not of good repute.

323 First of all, as the ECB submits, the contested decision is not based solely on the criminal investigation into the applicant's husband.

324 Next, it is apparent from paragraph 10.14 of the Joint Guidelines that the competent authorities should not consider that the absence of a criminal conviction or prosecution or an administrative measure constitutes in and of itself sufficient evidence of the integrity of a proposed acquirer.

325 Lastly, it cannot be held that the ECB infringed the presumption of innocence of the applicant's husband, since, first, it did not refer to his guilt in the criminal proceedings and, second, it did not base its assessment on his possible criminal guilt.

326 Therefore, the applicant's arguments in that regard should be rejected.

327 Second, the applicant claims that the contested decision is based on outdated information gathered by BaFin in 2019, without taking into account the fact that her husband addressed BaFin's concerns and that he wished to hand over the Target to his children and to his wife. The applicant challenges the ECB's failure to take into account the actions taken by her husband in the interests of the Target. Lastly, she submits that the ECB did not take account of the prudential assessment conducted by BaFin in 2022, which does not establish that her husband might have directly influenced the proxies or breached the commitment to refrain from giving them voting instructions.

328 It must be noted that the applicant, by means of the arguments referred to in paragraph 327 above, does not put into question the facts taken into consideration by the ECB, but refers to new facts which might indicate that her husband is no longer of bad repute. Paragraph 10.10 of the Joint Guidelines states that the ECB must take into consideration the existence of 'negative records'. It must carry out an overall analysis of the conduct of the person concerned; the existence of new circumstances or conduct demonstrating the intention of the person concerned to restore his or her good repute does not necessarily mean that the ECB must conclude that that person is in fact of good repute.

329 Moreover, the facts mentioned by the applicant in the context of that line of argument are not such as to call into question the facts taken into consideration by the ECB in its examination. In addition, BaFin's proposed decision of 4 April 2023 refers to a prudential assessment carried out in 2022, without providing further details. In that regard, it should be borne in mind that the 2022 SREP decision was adopted after the contested decision, with the result that it should not be taken into account in assessing the lawfulness of that decision. In any event, BaFin maintains that the bad repute of the applicant's husband is still assumed.

330 The applicant's line of argument is therefore not sufficient to demonstrate that the contested decision is based on materially incorrect facts or that it is vitiated by an error of law or a manifest error of assessment.

331 It follows that the applicant's arguments in that regard must be rejected.

332 Consequently, the first part of the fifth plea in law, concerning the applicant's integrity, must also be rejected.

333 It should be borne in mind that the competent authority may oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of one or more of the criteria referred to in Article 23(1) of the CRD IV Directive.

334 Therefore, since it is established that the proposed acquisition may be prohibited in the light of the criterion relating to reputation, as is apparent from the analysis of the first part of the fifth plea, the other parts of that plea, which concern the other assessment criteria referred to by the ECB in the contested decision, do not have to be examined by the Court.

The sixth plea in law, alleging infringement of the Charter

335 The applicant alleges several infringements of the Charter by the contested decision.

336 According to the applicant, first, in finding that she is of bad repute solely on the basis of her marriage and the fact that she is entirely dependent on her husband, the contested decision infringed Article 7 (respect for private and family life), Article 9 (right to marry and right to found a family) and Article 33 (family and professional life) of the Charter. Next, by failing to take into account the objectives pursued by the applicant in connection with the proposed acquisition and by being founded on prejudice, the contested decision also infringed Article 21 (regarding non-discrimination) of the Charter. Further, in concluding that the applicant's husband was not of good repute, with the consequence that she herself was considered to be of bad repute, the ECB infringed Article 48 (concerning the presumption of innocence and right of defence) of the Charter. Lastly, in so far as it would lead to the transfer of the Target outside the Warburg family, save in the event of the death of the applicant's husband, the contested decision infringed Article 17 (right to property) of the Charter.

337 The ECB disputes any infringement of the Charter.

338 As regards the alleged infringement of Article 21 of the Charter, it should be borne in mind that, in accordance with settled case-law, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the proceedings before the General Court in accordance with the first paragraph of Article 53 of that statute and Article 76(d) of the Rules of Procedure, an application must state the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. That information must be sufficiently clear and precise to enable the defendant to prepare its defence and the General Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice, it is necessary, for an action to be admissible, that the basic legal and factual particulars relied on are indicated coherently and intelligibly in the text of the application itself (see order of 17 November 2020, *González Calvet* v *SRB*, T-257/20, not published, EU:T:2020:541, paragraph 9 and the case-law cited).

339 The applicant claims that the contested decision is based on a prejudice which she describes as 'obvious' and which discriminates against her. However, she did not specify what that prejudice consisted of, or even on the basis of what criterion she considered herself to be a victim of discrimination under Article 21 of the Charter.

340 Consequently, the plea of inadmissibility based on Article 76(d) of the Rules of Procedure, raised by the ECB, is well founded and the part of this plea alleging infringement of Article 21 of the Charter must be rejected.

341 As regards the alleged infringement of Articles 7, 9 and 33 of the Charter, the applicant submits that the ECB relied exclusively on her family ties to her husband in order to conclude that she did not satisfy the criterion relating to reputation. She adds, at the reply stage, that the ECB regarded her, on the basis of prejudice, as being totally dependent on her husband because she is a woman.

342 It must be held that the applicant's claims are unfounded, having regard to the factors which were taken into account in the ECB's analysis of the criterion relating to reputation.

343 Indeed, the ECB finds that the applicant does not have the requisite professional competence, irrespective of the marital relationship between her and her husband, as is apparent from paragraphs 270 to 280 above. Moreover, the ECB holds that the applicant's husband will be likely to influence the applicant's decisions having regard to the particular circumstances of the present case, as is apparent from paragraphs 301 to 304 above.

344 The applicant has therefore not established that the contested decision entailed an infringement of Articles 7, 9 and 33 of the Charter.

345 As regards the applicant's arguments that the ECB infringed the presumption of innocence and her husband's rights of defence, protected by Article 48 of the Charter, it should be recalled that the infringement of a subjective right may be invoked only by the person whose right has allegedly been infringed, and not by third parties (see, to that effect, judgment of 1 March 2023, *Jushi Egypt for Fiberglass Industry* v *Commission*, T-540/20, EU:T:2023:91, paragraph 35 (not published) and the case-law cited).

346 Since the presumption of innocence and the rights of defence are subjective rights, the applicant is not entitled to invoke an infringement of those rights in respect of her husband, who is not himself a party to the proceedings.

347 In any event, it is apparent from the examination of the fifth plea that the ECB took account of the applicant's specific situation and, in particular, her professional competence, in order to oppose the proposed acquisition.

348 The infringement of the presumption of innocence and of the rights of defence alleged by the applicant must therefore be rejected.

349 As regards the applicant's arguments that the contested decision obliges the Warburg family to divest in the Target and prevents its transfer to the next generation, even though the Target has been in the family for a long time, which constitutes an infringement of Article 17 of the Charter, it should be noted that the right to property is a subjective right. The right invoked by the applicant in the present case is the right of her husband, who is not a party to the proceedings. Consequently, in accordance with the case-law referred to in paragraph 345 above, the applicant is not justified in pleading an infringement of Article 17 of the Charter.

350 In any event, it should be noted that Article 17(1) of the Charter provides that everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions.

351 It must also be borne in mind that the right to property guaranteed by Article 17(1) of the Charter is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (see judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69 and the case-law cited).

352 Consequently, as is apparent from Article 52(1) of the Charter, restrictions may be imposed on the exercise of the right to property, provided that the restrictions genuinely meet objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed (see judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 70 and the case-law cited).

353 In that regard, it should be noted that the monitoring of qualifying holdings meets an objective of general interest pursued by the European Union, namely that of contributing to the safeguarding of the stability of the banking system of the European Union, as is apparent from paragraphs 192 and 287 above.

354 In the present case, the contested decision precludes the proposed acquisition, in view of the fact that the applicant does not fulfil at least one of the assessment criteria set out in Article 23 of the CRD IV Directive and point 1 of the first sentence of Paragraph 2c(1b) of the KWG.

355 In view of the objective of ensuring the stability of the banking system in the European Union and having regard to the fact that the proposed acquisition did not guarantee the sound and prudent management of the Target, the contested decision does not constitute a disproportionate and intolerable interference impairing the very substance of the right to property relied on by the applicant. It cannot, therefore, be regarded as an unjustified restriction of that right (see, by analogy, judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraphs 71 to 74).

356 In the light of those factors, the applicant's arguments alleging infringement of Article 17(1) of the Charter must be rejected.

357 It follows from all of the foregoing that the sixth plea in law must be dismissed in its entirety.

The seventh plea in law, alleging infringement of the principle of proportionality

358 The applicant submits that the contested decision infringed the principle of proportionality, which is a fundamental principle of EU law enshrined in Article 5(4) TFEU.

359 In the applicant's view, the ECB erred in failing both to identify any damage which might result from the proposed acquisition and to weigh that damage against its considerable doubts.

360 The applicant also submits that the ECB failed to consider less intrusive measures than prohibiting the proposed acquisition, even though it had the option of doing so under the third sentence of Paragraph 2c(1b) of the KWG. She is of the view that it would have been more appropriate to authorise the proposed acquisition subject to prudential measures in relation to the Target.

361 The applicant also maintains that the ECB failed to apply an appropriate and proportionate assessment standard, in erroneously finding that she would acquire a controlling holding in the Target. BaFin and the ECB were thus not entitled to require the applicant to provide them with a business plan or an additional plan relating to the capital shortfall. Nor could the ECB make a strict assessment of the applicant's financial soundness.

362 Lastly, the applicant claims that the ECB misused its powers in forcing the Warburg family to sell the Target in the light of the suspicions of tax evasion against her husband, who, on that basis, lacks good repute.

363 The ECB rejects the applicant's claims.

364 The principle of proportionality requires that acts adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 29 July 2024, *Koiviston Auto Helsinki* v *Commission*, C-697/22 P, EU:C:2024:641, paragraph 77).

365 The assessment of the proportionality of a measure must be reconciled with compliance with the discretion that may have been conferred on the EU institutions at the time it was adopted (see judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 53 and the case-law cited). As stated in paragraphs 192 and 193 above, the ECB enjoys broad discretion. That fact must therefore be taken into account in the examination of the proportionality of the contested decision.

366 In the present case, paragraph 2.16 of the contested decision contains a proportionality assessment. That paragraph sets out, first, the objectives pursued by the monitoring of qualifying shareholdings, namely to contribute to the safeguarding of the stability of the banking system by ensuring that only sound and properly functioning credit institutions operate therein in order to protect depositors and thus shield credit institutions from detrimental influence exercised by any future shareholder which could distort compliance. That same paragraph goes on to state that the applicant does not meet the criteria listed in Paragraph 2c(1b) of the KWG.

367 The ECB adds, moreover, in paragraph 2.16 of the contested decision, that whether a different transaction setup could achieve the objective of the proposed acquisition, that is to say, to keep the Targets within the Warburg family, goes beyond the scope of the transaction under examination.

368 Indeed, it is for the applicant to dispel the doubts expressed by the ECB during the assessment period, if necessary by restructuring the proposed transaction. However, it is common ground that the applicant did not suggest an alternative to the proposed transaction.

369 Lastly, the ECB rejects, in paragraph 2.16 of the contested decision, the only proposal made by the applicant during the assessment procedure. That proposal consisted of the applicant exercising her voting rights in Warburg Gruppe jointly with one of the proxies of MWB 1, for a period of one year.

370 However, the ECB considers, first, that BaFin intended to maintain the appointment of the two proxies responsible for exercising MWB 1's voting rights in Warburg Gruppe, including following the proposed acquisition. That circumstance therefore precludes the applicant from being able to exercise her voting rights in Warburg Gruppe either individually or jointly with one of the proxies. Second, the ECB considers that the exercise of MWB 1's voting rights in Warburg Gruppe by the proxies is not a permanent solution. Third, the ECB states that it has serious doubts as to the independence of one of the two proxies, for the reasons set out in paragraph 2.12 of the contested decision.

371 The ECB thereby did take account of the proposal made by the applicant, but opposed it, deeming it inappropriate. The applicant therefore failed to dispel the doubts expressed by the ECB during the assessment period, by restructuring the proposed transaction.

372 The applicant claims, nevertheless, that the ECB could have authorised the proposed acquisition while subsequently adopting appropriate supervisory measures in respect of the Target. However, that argument is irrelevant.

373 First, the applicant does not identify any provision of EU or national law providing for the possibility for the ECB to adopt a decision authorising the acquisition subject to conditions (see, to that effect and by analogy, judgment of 25 June 2015, *CO Sociedad de Gestión y Participación and Others*, C-18/14, EU:C:2015:419, paragraphs 34, 37, 38 and 46).

374 Second, as the ECB submits, authorising the proposed acquisition subject to the adoption of subsequent prudential measures runs counter to the objectives, which are notably preventive, pursued by the monitoring of qualifying holdings and referred to, inter alia, in paragraph 248 above.

375 Lastly, the applicant submits that the contested decision is disproportionate in that the ECB applied 'the wrong assessment standard' in finding that she could exert a dominant influence on the Targets.

376 However, as was pointed out in the context of the examination of the fourth plea, the ECB did not take account of materially incorrect facts or make a manifest error of assessment in concluding that the applicant would acquire control of the Target following the proposed acquisition.

377 It follows from the foregoing considerations that the seventh plea in law must be rejected.

378 As all the pleas on which the applicant relies have been rejected, the application must be dismissed.

Costs

379 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

380 Since the applicant has been unsuccessful, she must be ordered to bear her own costs and to pay those of the ECB, in accordance with the form of order sought by the latter.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders YH to bear her own costs and to pay those incurred by the European Central Bank (ECB).**

da Silva Passos Półtorak Reine

Pynnä Cassagnabère

Delivered in open court in Luxembourg on 19 November 2025.

V. Di Bucci
Registrar

M. van der Woude
President