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

17 April 2024 (*)

(State aid – Swedish tax law – Tax on the systemic risk of credit institutions – Decision not to raise any objections – Selective nature – Objective of the measure – Derogation from the reference system)

In Case T-112/22,

Ideella föreningen Svenska Bankföreningen med firma Svenska Bankföreningen, Näringsverksamhet, established in Stockholm (Sweden),

Länsförsäkringar Bank AB, established in Stockholm,

represented by P. Hansson, M. Eriksson, M. Persson and A. Andersson, lawyers,

applicants,

v

European Commission, represented by F. Tomat and A. Steiblytė, acting as Agents,

defendant,

supported by

Kingdom of Sweden, represented by C. Meyer-Seitz, A. Runeskjöld, F.-L. Göransson, H. Shev, H. Eklinder and R. Shahsavan Eriksson, acting as Agents,

intervener,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Papasavvas, President, R. da Silva Passos, M. Jaeger, S. Gervasoni and N. Półtorak (Rapporteur), Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure,

further to the hearing on 9 November 2023,

gives the following

Judgment

1 By their action under Article 263 TFEU, the applicants, Ideella föreningen Svenska Bankföreningen med firma Svenska Bankföreningen, Näringsverksamhet and Länsförsäkringar Bank AB, seek the annulment of European Commission Decision COM(2021) 8637 final of 24 November 2021 on State aid SA.56348 (2021/N) – Sweden: Swedish tax on credit institutions (‘the contested decision’).

Background to the dispute

2 The first applicant, Ideella föreningen Svenska Bankföreningen med firma Svenska Bankföreningen, Näringsverksamhet, is a Swedish association of bankers, which represents its 31 members in matters of common interest, both nationally and internationally. Its members are banks and financial institutions established in Sweden.

3 The second applicant, Länsförsäkringar Bank, is a member of that bankers' association.

4 In accordance with Article 108(3) TFEU, on 3 September 2021 the Kingdom of Sweden notified the Commission of a draft law concerning a risk tax on credit institutions, as well as draft amendments to the Law on foreign tax credit (together, 'the draft law'). The Kingdom of Sweden was nevertheless of the opinion that the tax introduced ('the tax') did not fulfil the selectivity criteria laid down in Article 107(1) TFEU and that it did not therefore constitute State aid. The draft law was adopted, and the law entered into force on 1 January 2022.

5 Under Section 1 of point 2.1 of the draft law, credit institutions are to be liable to pay the tax to the State.

6 Under Section 4 of point 2.1 of the draft law, Swedish credit institutions are to be liable to tax if the sum of their liabilities at the beginning of the tax year exceeds the threshold limit laid down by the draft law. That provision provides that foreign credit institutions are to be liable to that tax if, at the beginning of the tax year, they have liabilities that are attributable to business operations carried out from a Swedish branch and the sum of those liabilities exceeds the threshold limit laid down by the draft law. In the reasons for the draft law relating to that section, reference was made to Swedish law for the purposes of defining credit institutions, namely Swedish banks and Swedish credit market companies, and foreign banking companies and foreign credit companies. As a result, nine credit institutions were liable to pay the tax.

7 In Section 5 of point 2.1 of the draft law, the threshold limit is set at 150 thousand million Swedish kronor (SEK) (approximately EUR 13.3 thousand million) for tax years commencing in 2022. For tax years commencing in 2023 or later, the threshold limit amounts to SEK 150 thousand million multiplied by a figure stating the ratio between the price base amount in 2022 and the price base amount for the year in which the tax year in question began, expressed as a percentage with two decimals rounded down plus two percentage points.

8 Section 6 of point 2.1 of the draft law governs situations where a credit institution is part of a group of credit institutions. In such cases, the combined liabilities of the group of credit institutions at the beginning of the tax year are to be taken into account when applying Section 4 of point 2.1 of the draft law. However, in the case of a foreign credit institution that is part of a group, only liabilities that are attributable to the credit institution's business operations carried out from a Swedish branch are to be taken into account when calculating the combined liabilities. It is also stipulated that, in addition to allocations and untaxed reserves, certain liabilities are not to be taken into account when calculating the combined liabilities. That stipulation covers, first, liabilities to a Swedish credit institution that is part of the same group and, second, liabilities to a foreign credit institution that is part of the same group, to the extent that the claims corresponding to the liabilities are attributable to the foreign credit institution's business operations carried out from a Swedish branch.

9 Section 9 of point 2.1 of the draft law sets the tax rate as 0.05% of the sum of the liabilities of the credit institutions liable for the tax. Point 2.2 of the draft law provides that the rate is to be 0.06% for the 2023 tax year.

10 Section 1 of Chapter 5 of point 2.3 of the draft law provides that, subject to certain conditions, an entity which is liable to the tax and has liabilities to a foreign credit institution within the same group is to be entitled to a credit for foreign tax paid by that foreign credit institution.

11 On 30 September 2021 the Commission sent the Kingdom of Sweden a request for information, to which a response was provided on 5 October 2021.

The contested decision

12 By the contested decision, the Commission found that the tax did not constitute State aid, within the meaning of Article 107(1) TFEU, as it did not satisfy the selectivity criterion laid down in that provision.

13 In that regard, in the first place, as regards the identification of the 'normal' tax regime, the Commission found that, since that regime was limited to that tax, which pursued its own logic, the regime was independent of the other national tax regimes, the constituent elements of which were consistent with its objective, namely that of strengthening public finances by means of contributions from large credit institutions potentially creating significant indirect costs for society, thereby making scope for coping with such indirect costs that future financial crises may entail. The Commission concluded that the 'normal' regime was not configured according to manifestly discriminatory parameters intended to circumvent EU law on State aid.

14 In the second place, first, the Commission found that the credit institutions exclusively targeted by the tax, whose liabilities were a source of instability with regard, in particular, to the financial system and the real economy, differed from other financial institutions, since those institutions did not present the same degree of risk of causing such instability. Therefore, according to the Commission, the other financial institutions were not in a similar factual and legal situation in the light of the objective of the tax.

15 Second, the Commission concluded that the liability threshold established by the tax was intended to reflect the size of credit institutions and, consequently, the risk of them creating significant indirect costs. Credit institutions whose liabilities were below the threshold laid down by the tax were not in a similar factual and legal situation to that of institutions holding liabilities exceeding that threshold in the light of the objective of the tax and, therefore, their exemption from the tax did not constitute a derogation from the 'normal' regime.

Forms of order sought

16 The applicants claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

17 The Commission, supported by the Kingdom of Sweden, contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

Law

18 In support of the action, the applicants rely on a single plea in law alleging that their procedural rights have been infringed.

19 According to the applicants, in its analysis of the tax, the Commission ought to have experienced serious difficulties. Accordingly, it should have opened the formal investigation procedure and given them the possibility to make their views known and thus to exercise their procedural rights. In that context, the

applicants are contesting the Commission's assessments made in the contested decision as regards the selective nature of the tax.

20 The Commission, supported by the Kingdom of Sweden, contests the applicants' line of argument.

Preliminary observations

21 The Court notes that, in the context of the procedure for reviewing State aid, the preliminary phase of the procedure for reviewing aid under Article 108(3) TFEU, which is intended merely to allow the Commission to form a prima facie opinion on the notified measure, must be distinguished from the formal investigation procedure under Article 108(2) TFEU.

22 The lawfulness of a decision not to raise objections, such as the contested decision, based on Article 4(3) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] (OJ 2015 L 248, p. 9), depends on the question whether the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should objectively have raised doubts as to the classification of that measure as aid within the meaning of Article 107(1) TFEU, given that such doubts must lead to the initiation of a formal investigation procedure in which the interested parties referred to in Article 1(h) of that regulation may participate (see, by analogy, judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 38).

23 When an applicant seeks the annulment of a decision not to raise objections, that applicant essentially contests the fact that the Commission adopted the decision in relation to the aid at issue without initiating the formal investigation procedure, thereby infringing the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea capable of showing that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should have raised doubts as to the classification of that measure as aid within the meaning of Article 107(1) TFEU (see, to that effect, judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 39 and the case-law cited).

24 Evidence of the existence of such doubts, which requires investigation of both the circumstances in which the decision not to raise objections was adopted and its content, must be adduced by the applicant seeking the annulment of that decision on the basis of a body of consistent evidence (judgments of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 40, and of 19 September 2018, *HH Ferries and Others* v *Commission*, T-68/15, EU:T:2018:563, paragraph 63). In that regard, it is not for the Court to determine whether there are reliable indications that there are no doubts as to the classification of the measure at issue as aid. On the contrary, it is for the Court to ascertain whether the applicant has adduced evidence of such doubts, if necessary by adducing a body of consistent evidence (see, to that effect, judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 73).

25 In that context, if the examination carried out by the Commission during the preliminary examination procedure is insufficient or incomplete, this constitutes an indication of the existence of serious difficulties in the assessment of the measure at issue, which should have triggered the Commission's obligation to initiate the formal investigation procedure (see judgment of 2 September 2021, *Commission* v *Tempus Energy and Tempus Energy Technology*, C-57/19 P, EU:C:2021:663, paragraph 41 and the case-law cited).

26 Lastly, the concept of 'serious difficulties' is an objective one. It follows that judicial review by the Court of the existence of serious difficulties cannot be restricted to consideration of whether or not there has been a manifest error of assessment (see judgments of 27 September 2011, *3F* v *Commission*, T-30/03 RENV, EU:T:2011:534, paragraph 55 and the case-law cited, and of 10 July 2012, *Smurfit Kappa Group* v *Commission*, T-304/08, EU:T:2012:351, paragraph 80 and the case-law cited).

27 It is in the light of that case-law that the Court must examine the applicants' line of argument seeking to establish the existence of doubts as to the classification of the tax as aid within the meaning of Article 107(1) TFEU, which should have led the Commission to initiate the formal investigation procedure.

28 In that regard, the Court notes that the classification of a national measure as 'State aid', within the meaning of Article 107(1) TFEU, requires all the following conditions to be fulfilled. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between the Member States. Third, it must confer a selective advantage on the beneficiary. Fourth, it must distort or threaten to distort competition (see judgment of 8 November 2022, *Fiat Chrysler Finance Europe* v *Commission*, C-885/19 P and C-898/19 P, EU:C:2022:859, paragraph 66 and the case-law cited).

29 The applicants state that 'the present application contests the validity of the Commission's assessments of the [notified] measure as regards the selectivity condition' in so far as the Commission was faced with serious difficulties in that regard and should have initiated the formal investigation procedure.

30 So far as concerns the condition relating to whether a selective advantage is given, it requires a determination as to whether, under a particular legal regime, the national measure at issue is such as to favour 'certain undertakings or the production of certain goods' over other undertakings which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation and which accordingly suffer different treatment that can, in essence, be classified as discriminatory (see judgment of 8 November 2022, *Fiat Chrysler Finance Europe* v *Commission*, C-885/19 P and C-898/19 P, EU:C:2022:859, paragraph 67 and the case-law cited).

31 As regards, in particular, national measures that confer a tax advantage, it must be recalled that a measure of that nature which, although not involving the transfer of State resources, places the recipients in a more favourable position than other taxpayers is capable of procuring a selective advantage for the recipients and, consequently, of constituting 'State aid', within the meaning of Article 107(1) TFEU. Accordingly, a measure that mitigates the financial burdens which are normally borne by the budget of an undertaking and which thus, without being a subsidy in the strict sense of the word, is similar in character and has the same effect is also regarded as State aid (see, to that effect, judgments of 16 March 2021, *Commission* v *Poland*, C-562/19 P, EU:C:2021:201, paragraph 30, and of 16 March 2021, *Commission* v *Hungary*, C-596/19 P, EU:C:2021:202, paragraph 36).

32 In order to classify a national tax measure as 'selective', the Commission must begin by identifying the reference system, that is the 'normal' tax system applicable in the Member State concerned, and demonstrate, as a second step, that the tax measure at issue is a derogation from that reference system, in so far as it differentiates between operators who, in the light of the objective pursued by that system, are in a comparable factual and legal situation. The concept of 'State aid' does not, however, cover measures that differentiate between undertakings which, in the light of the objective pursued by the legal regime concerned, are in a comparable factual and legal situation, and are, therefore, a priori selective, where the Member State concerned is able to demonstrate, as a third step, that that differentiation is justified, in the sense that it flows from the nature or general structure of the system of which those measures form part (see judgments of 21 December 2016, *Commission* v *World Duty Free Group and Others*, C-20/15 P and C-21/15 P, EU:C:2016:981, paragraphs 57 and 58 and the case-law cited, and of 8 November 2022, *Fiat Chrysler Finance Europe* v *Commission*, C-885/19 P and C-898/19 P, EU:C:2022:859, paragraph 68 and the case-law cited).

33 In the present case, the applicants dispute the Commission's examination in the contested decision relating to the first two stages referred to in paragraph 32 above.

34 As is apparent from recitals 66, 70 and 72 of the contested decision, the Commission concluded, first, that the reference system had not been configured according to manifestly discriminatory parameters and, second, that the fact that certain types of operators or operators whose aggregate liabilities were below the threshold set in the draft law were not liable to pay the tax did not constitute a derogation from the

reference system in so far as those operators were not, in the light of the objective of the tax, in a factual and legal situation similar to that of the banking institutions subject to that tax.

35 Consequently, the Court will examine the applicants' arguments relating to the various elements of the tax analysed by the Commission in the contested decision, after determining the objective pursued by the national legislature.

The objective of the tax

36 It is the applicants' submission that the objective of the tax is biased in so far as it singles out 'large credit institutions', despite the fact that all credit institutions are likely to contribute to indirect costs in the event of a financial crisis. Furthermore, the tax singled out a few undertakings, in a market where over a hundred other undertakings are present. Those few undertakings thus face a significant tax increase. The tax is designed in such a way that only a few undertakings contribute to the financing of those indirect costs. However, it is undisputed that undertakings other than those subject to the tax also cause indirect costs. Accordingly, the notified measure gives rise to unjustified discrimination, which should have been clear to the Commission from the information it had at its disposal when adopting the contested decision. According to the applicants, the fact that the revenue from that tax is intended to be used for additional public expenditure, without the intention of creating a fund to offset future indirect costs, at the very least raises questions about the actual objective of the tax.

37 In addition, the applicants claim that the draft law makes clear that the objective of the tax is to increase the taxation of large credit institutions which, in the event of a financial crisis, are likely to cause significant indirect costs to society. The applicants state that the root cause of those costs is the difficulties in obtaining loans from banks during a financial crisis. Indirect costs, defined vaguely in the draft law, are, in essence, all costs that an economic downturn may lead to for the State. Furthermore, the objective of the tax is thus not to create a fund to offset future indirect costs, but to strengthen public finances so as to allow for increased public spending.

38 The Commission, supported by the Kingdom of Sweden, contests the applicants' line of argument.

39 In the present case, as is apparent from point 5.1 of the reasons for the draft law, the aim of the tax is to strengthen public finances by improving them and keeping public debt at a low level in order to provide room to cope with future financial crises. In particular, the argument is made that, with stronger public finances, the Kingdom of Sweden is better equipped to meet challenges and implement necessary measures in a crisis situation.

40 It is also stated in the draft law that financial crises are costly and may give rise, in particular, to indirect costs resulting from the decline in the economic cycle and the deterioration of public finances. However, not all credit institutions pose the same risk to the operation of the financial system. Large credit institutions form such an important part of that system that their failure or serious disruption would, on an individual basis, present a systemic risk and have a very negative impact on that system and on the economy in general. Thus, the problems of one of the large credit institutions can quickly spread throughout the banking system. In particular, by owning each other's bonds, a problem arising in one part of the system can quickly spread to other parts and thus threaten financial stability. Smaller credit institutions, which are not critical to the financial system, do not affect macroeconomic developments to the same extent as larger ones. Consequently, credit institutions that, because of their size and importance for the functioning of the financial system and macroeconomic development, are liable in the event of a financial crisis – the occurrence of which cannot be ruled out – to cause significant indirect costs to society should pay the tax.

41 It is apparent from those reasons for the draft law that the objective of the tax is to strengthen public finances by improving them and keeping public debt at a low level in order to provide room to cope with future financial crises by requiring the tax to be paid by large credit institutions, the failure or serious disruption of which would, on an individual basis and because of their size and importance for the

functioning of the financial system, present a systemic risk and would have a very negative impact on that system and on the economy in general, thus causing significant indirect costs for society.

42 In that regard, the Court notes that, at the hearing, the applicants relied on the possibility that credit institutions not subject to the tax, taken collectively, might be the cause of significant indirect costs for society. However, even if it were admissible, that argument must be rejected. First, as is apparent from paragraph 41 above, the tax is designed on the basis of the individual characteristics of credit institutions. Second, as is apparent from recital 25 of the contested decision, credit institutions subject to the tax account for 90% of the total liabilities of all credit institutions operating in Sweden. By stating merely that that percentage may not be correct without substantiating that claim with evidence, the applicants have not succeeded in effectively calling into question the finding that credit institutions not subject to the tax represent only 10% of the total liabilities of all credit institutions operating in Sweden. Consequently, the applicants have not demonstrated that the failure of those credit institutions not subject to the tax, even taken collectively, would pose a systemic risk and would have a very negative impact on the financial system and on the economy in general, thus giving rise to significant indirect costs for society.

43 Moreover, the applicants have not called into question the possibility that only large credit institutions may, on an individual basis, by their failure, create a systemic risk and have a very negative impact on the financial system and on the economy in general, thereby causing significant indirect costs for society. In their observations on the statement in intervention of the Kingdom of Sweden, they dispute that finding without substantiating their position, while acknowledging that the likelihood that a bank will cause indirect costs stems from two independent factors, namely, first, the likelihood that that bank will fail and, second, the effects caused by the failure of that bank.

The reference system

44 The applicants argue that the Commission had at its disposal evidence which should have raised doubts as to whether the elements of the reference system were consistent with the objective of the tax. The applicants maintain that the Commission's assessment of the reference system seems to stem from an overly wide interpretation of the tax sovereignty that each Member State enjoys.

45 The Commission disputes the applicants' line of argument.

46 In that regard, the Court recalls that, where the tax measure in question is inseparable from the general tax system of the Member State concerned, reference must be made to that system. On the other hand, where it appears that such a measure is clearly severable from that general system, it cannot be ruled out that the reference framework to be taken into account may be more limited than that general system, or even that it may equate to the measure itself, where the latter appears as a rule having its own legal logic and it is not possible to identify a consistent body of rules external to that measure (see judgment of 6 October 2021, *World Duty Free Group and Spain* v *Commission*, C-51/19 P and C-64/19 P, EU:C:2021:793, paragraph 63). A measure is capable of constituting its own reference framework where it introduces a clearly defined tax regime which pursues specific objectives and is therefore different from any other tax regime that is applied in the Member State concerned (judgment of 15 November 2018, *World Duty Free Group* v *Commission*, T-219/10 RENV, EU:T:2018:784, paragraph 127).

47 In the present case, the Commission defined the reference system as being restricted to the tax, which the applicants do not dispute as such.

48 The Court notes that the characteristics constituting the tax form, in principle, the reference system or the 'normal' tax regime for the purposes of analysing the condition of selectivity. That said, it cannot be ruled out that those characteristics may reveal a manifestly discriminatory element, which it is, however, for the applicants to demonstrate (see, to that effect, judgments of 16 March 2021, *Commission* v *Poland*, C-562/19 P, EU:C:2021:201, paragraph 42, and of 16 March 2021, *Commission* v *Hungary*, C-596/19 P, EU:C:2021:202, paragraph 48). However, in the context of the present case, which concerns a refusal by the Commission to initiate the formal investigation procedure, the applicants must demonstrate the

existence of serious difficulties encountered by the Commission in its examination of the condition of selectivity, which is the only condition at issue in the present case.

49 In that context, it must be stated that, in order to assess whether the characteristics of the tax indicate a manifestly discriminatory element, it is necessary to determine whether the choice of criteria for taxation, by favouring certain credit institutions, appears inconsistent in the light of the objective of that tax (see, to that effect, judgments of 16 March 2021, *Commission* v *Poland*, C-562/19 P, EU:C:2021:201, paragraph 43, and of 16 March 2021, *Commission* v *Hungary*, C-596/19 P, EU:C:2021:202, paragraph 49).

50 In that regard, outside the spheres in which EU tax law has been harmonised, it is the Member State concerned which determines, by exercising its own competence in the matter of direct taxation and with due regard for its fiscal autonomy and EU law, the characteristics constituting the tax, which define, in principle, the reference system or the 'normal' tax regime, from which it is necessary to analyse the condition relating to selectivity. That applies in particular to the determination of the choice of tax rate, the tax base, the taxable event, the threshold and the methods for calculating the basis of assessment (see, to that effect, judgments of 16 March 2021, *Commission* v *Poland*, C-562/19 P, EU:C:2021:201, paragraphs 38 and 39, and of 26 April 2018, *ANGED*, C-236/16 and C-237/16, EU:C:2018:291, paragraph 43). In addition, whether tax is levied at a single rate or at a progressive rate, the tax rate also forms part of the fundamental characteristics of a tax levy's legal regime, just as the group of taxable persons does (see, to that effect, judgments of 16 May 2019, *Poland* v *Commission*, T-836/16 and T-624/17, EU:T:2019:338, paragraph 65, and of 27 June 2019, *Hungary* v *Commission*, T-20/17, EU:T:2019:448, paragraph 80).

51 Account must be taken of the fact that, in the absence of EU rules, it falls within the competence of the Member States to designate bases of assessment and to spread the tax burden across the various factors of production and economic sectors (judgment of 26 April 2018, *ANGED*, C-233/16, EU:C:2018:280, paragraph 50).

52 According to the applicants, the parameters of the tax are clearly not consistent with its objective, which, in the light of the information at the Commission's disposal, should have raised doubts as to whether the tax should be classified as aid.

53 In particular, they refer, first, to the tax base established on the basis of the liabilities of credit institutions, second, to the persons liable to pay the tax, third, to the tax threshold and, fourth, to the consolidation mechanism in the calculation of the threshold and the tax base.

The tax base established on the basis of the liabilities of credit institutions

54 According to the applicants, liabilities are not associated with risks; assets are. The same applies to the size of credit institutions, as is borne out by a number of national institutions, financial literature and the credit ratings attributed to large Swedish credit institutions. Furthermore, indirect costs – or the risk of such costs – are not directly proportional to a credit institution's liabilities, a fact that was pointed out to the Commission. It is true that the Commission was not under an obligation, in its preliminary examination of the tax, to choose the most appropriate indicator for assessing the risk of indirect costs. However, the Commission was under an obligation to assess whether the tax base chosen by the Kingdom of Sweden introduced a manifestly discriminatory parameter to the reference system. The applicants also submit that, contrary to what is required by the recent case-law in relation to tax measures and selectivity, the notified measure imposed either a significant tax burden on the entire tax base of undertakings, or no tax burden whatsoever.

55 The Commission, supported by the Kingdom of Sweden, contests the applicants' line of argument.

56 In the contested decision, the Commission found that the size of a credit institution's liabilities was one indicator, among others, of its overall size, its importance and the risk that its failure may pose for the

macroeconomic environment in Sweden. Thus, according to the Commission, that criterion was consistent with the objective of the tax and did not reveal any manifestly discriminatory element.

57 In that regard, the Court notes that EU law thus does not preclude non-progressive taxation from being based on the aggregate sum of the liabilities of credit institutions. The fact that there are more relevant or more precise indicators than the aggregate sum of the liabilities of credit institutions is irrelevant in matters of State aid, since EU law on that matter seeks only to remove the selective advantages from which certain undertakings might benefit to the detriment of others which are placed in a comparable situation (see, to that effect, judgments of 16 March 2021, *Commission* v *Poland*, C-562/19 P, EU:C:2021:201, paragraph 41, and of 16 March 2021, *Commission* v *Hungary*, C-596/19 P, EU:C:2021:202, paragraph 47).

58 The Court also notes that, as set out in paragraphs 40 and 41 above, the tax is not intended to prevent or address the risks that credit institutions represent, but to strengthen national public finances in order to provide room to cope with future financial crises by requiring a tax to be paid by large credit institutions, the failure or serious disruption of which would, on an individual basis and because of their size and importance for the functioning of the financial system, present a systemic risk and have a very negative impact on that system and on the economy in general, thus causing significant indirect costs for society.

59 Furthermore, in particular in situations where institutions own each other's bonds, as referred to in paragraph 40 above, the higher the level of liabilities, the greater the risk to the financial system in so far as, in the event of failure, the credit institution concerned may not be able to meet its significant liabilities, which, consequently, creates a risk that its creditors will fail and, as a result, a risk of significant indirect costs for society. Consequently, a condition relating to the level of liabilities, such as that adopted in the national legislation in the present case, in order to distinguish between credit institutions according to whether they have a greater or lesser impact on the financial system, is consistent with the objective pursued (see, by analogy, judgment of 26 April 2018, *ANGED*, C-233/16, EU:C:2018:280, paragraph 53).

60 It follows that the national legislature did not take the view that the liabilities of large credit institutions made them more exposed to risks, but, instead, it focused on the issue whether, once materialised, the failure of a credit institution could give rise, on an individual basis, to significant indirect costs for society.

61 It follows that the applicants have not established that the Commission should have experienced serious difficulties in the assessment of the tax base.

The persons liable to the tax

62 The applicants claim, in addition to the heterogeneity of the nine institutions subject to the tax, that there is no correlation between the list of those institutions and the list of institutions of systemic importance identified by the Riksgäldskontoret (National Debt Office, Sweden) in the context of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190), in so far as the latter list includes only six of the nine credit institutions subject to the tax, and that the Commission has not provided any explanation in that regard. In addition, one of the credit institutions subject to the tax grants loans exclusively to Swedish municipalities and thus does not incur any indirect cost.

63 In that regard, the applicants observe that, under Directive 2014/59, banks pay into a resolution fund and that, of the nine banks identified by the National Debt Office as being of systemic importance, which entails significantly higher contributions to that fund and compliance with stricter requirements, only six were required to pay the tax. Moreover, because of those higher contributions and those stricter requirements, institutions of systemic importance are more resilient and less likely to give rise to indirect costs.

64 The applicants also rely on the existence of financial stability mechanisms for credit institutions, in particular 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).

65 To those mechanisms can be added, first, the fact that the Kingdom of Sweden opted for stricter requirements than those laid down by EU legislation and, second, the mechanism for guaranteeing bank deposits of individual depositors of up to EUR 100 000 under Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149). Furthermore, during the stress tests carried out in 2021 by the European Banking Authority (EBA), the five Swedish banks which were subject to those tests obtained excellent results.

66 The applicants also stress the competitive environment existing within the national financial sector. According to the applicants, that aspect is of interest in understanding the link between undertakings subject to the tax and the risk of causing indirect costs based on their market share in the various financial sectors. However, not all the banks subject to the tax have high market shares on all the relevant markets. Moreover, according to the applicants, if banks compete on the same market and some are subject to the tax and some are selectively relieved from paying the tax, this affects and alters the competition in the market, which indicates that there is discrimination.

67 The applicants add that the Swedish financial sector comprises many different undertakings active in one or more market segments which are in competition with the credit institutions subject to the tax.

68 The applicants submit that the lack of requirements imposed on those other financial institutions may represent an additional threat to financial stability and additional risks of indirect costs for the State. The applicants also put forward the importance of mortgage funds in the household mortgage sector.

69 The applicants conclude that, since all credit institutions generate indirect costs, a distinction between credit institutions for the purposes of liability to the tax is not mandated.

70 The Commission, supported by the Kingdom of Sweden, contests the applicants' line of argument.

71 In the contested decision, the Commission found that the persons liable to the tax were large credit institutions the failure or serious disruption in the activities of which could, on an individual basis, cause significant indirect costs to Swedish society in the event of a financial crisis. According to the Commission, large credit institutions may be systemically important, and have an influence and impact on the market, and were of critical size for the real economy. The Commission observed that, as the Kingdom of Sweden states, small credit institutions could affect macroeconomic developments to a different extent than large credit institutions.

72 In addition, other financial institutions are subject to a different and typically lighter regulatory regime, which indicates that their capacity to generate systemic risks and indirect costs is lower. As regards mortgage funds, which, according to the Commission, had in any event a limited share of the mortgage market, the Commission found that those funds were not engaged in certain activities such as taking deposits or offering loans to non-financial corporations, particularly since they differed from credit institutions in their operation and were subject to a different regulatory framework.

73 In the present case, in the first place, the Court rejects the applicants' argument that the list of institutions of systemic importance identified by the National Debt Office and the list of credit institutions liable to the tax are not perfectly aligned. As the applicants maintain, the National Debt Office is the Swedish resolution authority for the purpose of Directive 2014/59. In addition, at the hearing, the applicants maintained, in essence, that the list of establishments of systemic importance identified by the National Debt Office was not drawn up on the basis of specific criteria and that, therefore, different criteria were used for drawing up the list of credit institutions liable to the tax.

74 Moreover, as the applicants confirm, the purpose of the regime established by Directive 2014/59 and by Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1) is to minimise significant direct costs for society, in particular in the event of the failure of those institutions, and not indirect costs. The applicants state, however, that the undertakings to which the strictest rules of that regime apply are less likely to give rise to indirect costs, since they are less likely to fail. However, as is apparent from paragraph 60 above, the tax is not aimed at credit institutions which represent a greater risk of failure, but applies to credit institutions whose failure, once materialised, may give rise, on an individual basis, to significant indirect costs for society.

75 The same conclusion must be drawn as regards Regulation No 575/2013, Directive 2014/49 and the stress tests carried out by the EBA in 2021. First, the purpose of the own funds requirements and the bank deposit guarantee mechanism is to address direct costs by ensuring that credit institutions do not fail and that depositors – that is to say, individuals – do not lose their deposits. Second, the stress tests relate to the risk of a credit institution failing. The purpose of the tax is not to prevent possible failures of banking institutions or to avoid direct costs, but to take into consideration the indirect costs caused by the possible failure of credit institutions liable to the tax.

76 In the second place, as regards the competitive environment in the national financial sector, which, according to the applicants, is relevant in order to understand the link between the undertakings liable to the tax and the risk that they will give rise to indirect costs according to their market shares in the various financial sectors, first, it is sufficient to note that whether or not tax is chargeable is decided not on the basis of the market shares held by persons liable to the tax, but on the basis of the level of their liabilities. In accordance with the case-law cited in paragraph 50 above, the Kingdom of Sweden was entitled to determine, by exercising its own powers in the field of direct taxation and in compliance with its fiscal autonomy and EU law, the chargeable event for the tax and the tax base.

77 Second, the applicants do not claim that other undertakings active in one or more segments of the market that are in competition with the credit institutions liable to the tax held debts in excess of SEK 150 thousand million. They merely maintain that those undertakings are in competition with the credit institutions liable to the tax without explaining how their failure could, on an individual basis, give rise to significant indirect costs for society.

78 Third, as regards the argument alleging that the absence of requirements imposed on other financial institutions could represent an additional threat to financial stability and additional risks of indirect costs for the State, it is sufficient to note that, in support of their argument, the applicants do not provide explanations allowing the conclusion to be reached that there is any threat to financial stability, with the result that that argument can be rejected as unsubstantiated.

79 Fourth, as regards the argument that one of the credit institutions liable to the tax lends only to Swedish municipalities and thus does not give rise to any indirect costs, it must be borne in mind that, according to the case-law, in the case of an aid scheme, the Commission may merely study the general characteristics of the scheme at issue, without being required to examine each particular case in which that scheme applies. Thus, in a decision which concerns such a scheme, the Commission is not required to conduct an analysis of the aid granted in individual cases under the scheme (see, to that effect, judgments of 28 July 2011, *Diputación Foral de Vizcaya and Others* v *Commission*, C-471/09 P to C-473/09 P, not published, EU:C:2011:521, paragraphs 98 and 99, and of 30 April 2019, *UPF* v *Commission*, T-747/17, EU:T:2019:271, paragraph 60). Moreover, at the hearing, the applicants did not dispute the arguments of the Commission and the Kingdom of Sweden that that credit institution was not completely exempted from any risk of failure.

80 Fifth, as regards the argument that all credit institutions give rise to indirect costs, it must be borne in mind that, as stated in paragraph 41 above, the Swedish tax legislature had the objective of imposing the

tax on credit institutions, the failure or serious disruption of which would, on an individual basis and because of their size and importance for the functioning of the financial system, present a systemic risk and would have a very negative impact on that system and on the economy in general, thus causing significant indirect costs for society. Thus, even if all credit institutions may give rise to certain indirect costs, that is to say, that they may contribute to generating those costs, this does not mean that, in the event of failure, all credit institutions are likely to give rise to those consequences. Furthermore, it cannot be disputed that the impact on the financial system of credit institutions depends largely on the size of those institutions and the level of their liabilities, as noted in paragraph 59 above (see, by analogy, judgment of 26 April 2018, *ANGED*, C-233/16, EU:C:2018:280, paragraph 53). Moreover, at the hearing, the applicants acknowledged that the largest credit institutions generate greater indirect costs.

81 Lastly, as is apparent from paragraphs 42 and 43 above, first, the applicants have not called into question the ability of large credit institutions alone to cause, on an individual basis, by their failure, a systemic risk, to have a very negative impact on the financial system and on the economy in general and to generate significant indirect costs for society. Second, they have not shown that the failure of establishments not liable to the tax, even taken collectively, would have the same consequences.

82 Consequently, the applicants have not established that the Commission should have experienced serious difficulties in the assessment of the persons liable to the tax.

The threshold for liability to the tax

83 The applicants maintain that all credit institutions cause indirect costs for society in the event of a financial crisis. Furthermore, in the draft law, the Swedish Government did not establish that the risks involved materialised only when the threshold for liability to tax had been exceeded. Thus, large banks would pay for all indirect costs they incurred, whereas their competitors would be selectively relieved of paying for any costs they incurred.

84 Furthermore, they claim that the tax was not a special purpose tax but rather a tax with a purely fiscal purpose, to raise fiscal revenue, and was not seeking to influence the behaviour of the persons liable to the tax.

85 The applicants also add that if an undertaking meets the threshold value, the tax is imposed on all liabilities that count towards the threshold. Moreover, the tax threshold cannot be equated to a progressive tax rate.

86 They also dispute the Commission's analysis and its interpretation of the judgment of 26 April 2018, *ANGED* (C-233/16, EU:C:2018:280), on which the Commission relied in the contested decision. On the one hand, it is a different context from that in the present case and, on the other hand, the threshold for liability to the tax at issue in that case was applied differently in that that tax was imposed only on the part exceeding the threshold, which is not the case here.

87 The Commission, supported by the Kingdom of Sweden, contests the applicants' line of argument.

88 In the contested decision, the Commission stated that the threshold of SEK 150 thousand million did not constitute a manifestly discriminatory element and represented a legitimate expression of the Kingdom of Sweden's sovereignty. Moreover, the application of that threshold would ensure that persons liable to the tax represent 90% of the aggregate balance sheet total of all credit institutions in Sweden, including the Swedish branches of foreign credit institutions.

89 In that regard, according to case-law there are taxes whose nature does not preclude them from being accompanied by variation mechanisms, which may extend as far as exemptions, without those mechanisms leading, however, to selective advantages being granted. Special provisions laid down for certain undertakings by reason of situations specific to them, causing them to benefit from a variation in, or even an exemption from, tax, must not be analysed as constituting a selective advantage if those provisions do

not contravene the objective of the tax in question (see, to that effect, judgments of 16 May 2019, *Poland* v *Commission*, T-836/16 and T-624/17, EU:T:2019:338, paragraph 89, and of 27 June 2019, *Hungary* v *Commission*, T-20/17, EU:T:2019:448, paragraph 101).

90 In addition, the Court notes that the determination of the tax threshold and of the methods for calculating the basis of assessment comes within the discretion of the national legislature and is based, in addition, on technical, complex assessments that the EU Courts have only limited powers to review (see, to that effect, judgment of 26 April 2018, *ANGED*, C-236/16 and C-237/16, EU:C:2018:291, paragraph 43).

91 It is apparent from that case-law that the Kingdom of Sweden cannot be prevented, on the one hand, from introducing a tax with a tax threshold and, on the other hand, from establishing a variation mechanism that goes as far as to exempt credit institutions below that threshold, provided that those elements do not run counter to the objective of the tax.

92 It is therefore necessary to examine whether that threshold runs counter to the objective of the tax or is not manifestly discriminatory.

93 In that regard, first, as regards the argument that all credit institutions give rise to indirect costs for society in the event of a financial crisis, the Court recalls that, in the present case, as stated in paragraph 41 above, the objective of the tax is to strengthen public finances by improving them and maintaining public debt at a low level in order to provide room for coping with future financial crises by imposing a tax on large credit institutions, the failure or serious disruption of which would, on an individual basis and because of their size and importance for the functioning of the financial system, present a systemic risk and would have a very negative impact on that system and on the economy in general, thus causing significant indirect costs for society. The Kingdom of Sweden claims that the failure of a credit institution whose liabilities exceed the threshold of SEK 150 thousand million would pose such risks and would generate significant indirect costs for society. The applicants do not call into question that statement by the national legislature and, as noted in paragraph 43 above, they do not claim that the failure of a credit institution whose liabilities are below that threshold could have the same consequences. In addition, as stated in paragraph 59 above, in particular in situations where institutions own each other's bonds, the higher the level of indebtedness, the greater the risk to the financial system in so far as, in the event of failure, the credit institution concerned may not be able to meet its significant liabilities, which, consequently, creates a risk that its creditors will fail and, as a result, a systemic risk.

94 Second, as regards the argument that the tax is not a special purpose tax and is not intended to influence the behaviour of the persons liable to the tax, the applicants have not explained why it is required that the tax be intended to influence the behaviour of the persons liable to it. As is apparent from its objective, the purpose of the tax is to strengthen public finances by improving them and maintaining public debt at a low level in order to provide room for coping with future financial crises. No other specific purpose, such as influencing the behaviour of persons liable to the tax, was mentioned in the draft law. Thus, that argument cannot succeed, since the purpose of the tax is not to prevent credit institutions liable to that tax from taking risks or to prevent the failure of those institutions, but to ensure the sound management of public finances in the event of a failure of one of those institutions.

95 Similarly, the fact that the revenue from the tax is paid into the State budget is consistent with the objective referred to in paragraph 94 above.

96 Furthermore, first, as is apparent from the documents before the Court and as was confirmed by the applicants at the hearing, there were no credit institutions not liable to the tax whose level of liabilities was close to the threshold of SEK 150 thousand million.

97 Second, it is clear from the contested decision – and was not effectively disputed by the applicants (see paragraph 42 above) – that the application of that threshold ensures that the persons liable to the tax represent 90% of the aggregated balance sheet total of all credit institutions in Sweden.

98 It follows that the applicants have not put forward any arguments which would make it possible to regard the threshold of SEK 150 thousand million as manifestly inappropriate in the light of the objectives of the tax. Nor did they indicate what other level would have been appropriate for that threshold. It appears that they are disputing the very existence of a threshold. However, in accordance with the case-law cited in paragraphs 89 and 90 above, the establishment by the national legislature of thresholds is not, in itself, contrary to EU law.

99 It follows that the applicants have not established that the Commission should have experienced serious difficulties in the assessment of the threshold for liability to tax.

The consolidation mechanism

100 The applicants contest the consolidation mechanism for intra-group situations used to calculate the threshold and the tax base, in that intra-group liabilities in both domestic credit institutions and cross-border branches are counted towards the threshold. There is no direct link between indirect costs in Sweden and liabilities attributable to a foreign branch of a Swedish credit institution, whereas the liabilities of such branches account for a not insignificant part of the total tax base.

101 In addition, they argue that, with regard to indirect costs, foreign subsidiaries of Swedish credit institutions and foreign branches of such credit institutions are in a similar situation. However, those two situations are treated differently, since only the debts of the foreign branches of Swedish credit institutions are included in the tax base. Moreover, the liabilities of branches of foreign credit institutions situated in Sweden are also counted towards the threshold, with the result that there is an asymmetry with the treatment of foreign branches of Swedish credit institutions, the liabilities of which are taken into account for the purposes of calculating the tax.

102 The Commission disputes the applicants' arguments.

103 In that regard, first of all, the Court notes that, as is clearly set out in recital 59 of the contested decision, without being challenged by the applicants, the branch of a Swedish credit institution does not have legal personality independent of the institution to which it belongs and is covered by the same licence, as opposed to subsidiaries which constitute separate legal entities. Thus, any financial obligation of a branch lies with the Swedish credit institution to which it belongs, and a crisis affecting that branch would affect its parent company and cause indirect costs, not only in the State in which it is established, but also in Sweden. Consequently, the Court cannot find that the Commission should have had doubts as to that mechanism, since the branches of a Swedish credit institution are linked to that institution and, therefore, their failure would also produce effects in Sweden.

104 Then, for the same reasons, the Court must reject the argument that foreign subsidiaries and foreign branches of a Swedish credit institution are in a similar situation, since, as is stated in recital 60 of the contested decision, unlike branches, subsidiaries are legal entities which are separate from their parent companies and which operate under a separate licence issued by the State in which they are established.

105 Lastly, the applicants have not demonstrated that there is an asymmetry between the treatment of the liabilities of the foreign branches of a Swedish credit institution and the liabilities of the branches of foreign credit institutions located in Sweden. In recital 61 of the contested decision, the Commission stated that branches of foreign credit institutions established in Sweden could cause indirect costs both in Sweden and in the State where the parent company is located. Consequently, there is no asymmetry in that situation, since the liabilities of the foreign branches of a Swedish credit institution are taken into account in Sweden without that preventing those liabilities from potentially being taken into account, where appropriate, also in the State where the branches are established.

106 Therefore, the applicants have not demonstrated that the consolidation mechanism constitutes a manifestly discriminatory element and, therefore, that the Commission should have encountered serious difficulties in its assessment in that regard.

The derogation from the reference system

107 The applicants claim that, if the Court were to accept the reference system as it is defined in the contested decision, the arguments presented by the applicants in relation to the component elements of that system would still be valid in relation to derogations from that system.

108 Furthermore, as regards the existence of a derogation concerning the treatment of credit institutions with liabilities not exceeding the threshold of SEK 150 thousand million, the applicants submit that the activities of credit institutions with liabilities below the threshold do not entail the State being exposed to indirect costs in respect of those institutions in the event of a financial crisis. The difference between those credit institutions and those with liabilities exceeding the threshold does not thus relate to the existence of risks assumed by the State, but rather to the extent of such risks. There is therefore a derogation in the reference system, as it clearly discriminates between undertakings in a comparable legal and factual situation. What is more, from a legal perspective, credit institutions with liabilities above or below the threshold are not subject to clearly different compliance, accounting and tax requirements, which rely on the same type and level of liability threshold.

109 Moreover, they argue that the tax was a general contribution to the State's revenues, which could be used for different purposes, the real objective of which was to strengthen public finances through contributions from large credit institutions. Thus, according to the applicants, there was no valid reason to differentiate between undertakings belonging to a specific sector, when the objective of the tax was of a general nature. Furthermore, the government should have proposed to reserve the funds collected through the tax for future financial crises.

110 With regard to the existence of derogations in relation to the treatment of other financial institutions, the applicants refer to the arguments outlined in paragraph 68 above.

111 Consequently, according to the applicants, the tax is a priori selective and the Commission should have initiated a formal investigation procedure.

112 The Commission disputes the applicants' line of argument.

113 In the contested decision, first, the Commission found that the tax did not constitute a derogation from the reference system in the light of the treatment of other financial institutions. It found that they do not have a liability structure that gives rise to the same degree of instability and are subject to different and less strict regulatory regimes, which indicates that they are less likely to generate a systemic risk and indirect costs. Therefore, those institutions are not in a similar factual and legal situation as credit institutions in the light of the objective of the tax.

114 As regards mortgage funds, which in any event have a limited share of the mortgage market, the Commission found that they were not engaged in certain critical activities similar to those of credit institutions. Moreover, they differ in terms of their functioning and come under a different regulatory framework and are not able to generate indirect costs in the same magnitude as credit institutions.

115 Second, it found that large credit institutions may be systemically important, and have an influence and impact on the market, and were critical to the real economy, unlike smaller ones. Thus, the former are more likely to cause indirect costs in the event of a crisis. Therefore, large credit institutions are not in a similar factual and legal situation as small credit institutions in the light of the objective of the tax.

116 According to settled case-law, the fact that only taxpayers satisfying the conditions for the application of a measure can benefit from a measure cannot, in itself, make it into a selective measure (see judgments of 21 December 2016, *Commission* v *World Duty Free Group and Others*, C-20/15 P and C-21/15 P, EU:C:2016:981, paragraph 59 and the case-law cited, and of 16 March 2021, *Commission* v *Hungary*, C-596/19 P, EU:C:2021:202, paragraph 58).

117 Furthermore, as recalled in paragraph 89 above, a tax is not selective if those differences in taxation and the advantages which may flow therefrom, even if justified only by the purpose governing the apportionment of tax between taxpayers, stem from the straightforward application, without derogation, of the 'normal' system, if comparable situations are treated comparably and if those variation mechanisms do not misconstrue the objective of the tax concerned. Similarly, special provisions laid down for certain undertakings by reason of situations specific to them, causing them to benefit from a variation in, or even an exemption from, tax, must not be analysed as constituting a selective advantage if those provisions do not contravene the objective of the tax in question (judgments of 16 May 2019, *Poland* v *Commission*, T-836/16 and T-624/17, EU:T:2019:338, paragraph 89, and of 27 June 2019, *Hungary* v *Commission*, T-20/17, EU:T:2019:448, paragraph 101).

118 On the other hand, if undertakings in a comparable situation in the light of the objective of the tax or the purpose justifying a variation thereof are not treated equally in that regard, that discrimination gives rise to a selective advantage which may constitute State aid if the other conditions laid down in Article 107(1) TFEU are met (judgment of 27 June 2019, *Hungary* v *Commission*, T-20/17, EU:T:2019:448, paragraph 102).

119 As a preliminary point, the Court notes that, since the applicants' arguments relating to the reference system were analysed in paragraphs 54 to 106 above, they must also be rejected in the context of the examination of the present complaint in so far as, with regard to the reference system, those arguments were examined in a similar context, namely with regard to whether there was manifest discrimination.

120 That said, in the first place, as regards the existence of derogations concerning the treatment of credit institutions whose liabilities do not exceed the threshold of SEK 150 thousand million, the Court notes, as was stated in paragraph 41 above, that it is apparent from the reasons for the draft law that the objective of the tax was to strengthen public finances by improving them and maintaining public debt at a low level in order to provide room for coping with future financial crises by requiring the tax to be paid by large credit institutions, the failure or serious disruption of which would, on an individual basis and because of their size and importance for the functioning of the financial system, present a systemic risk and would have a very negative impact on that system and on the economy in general, thus causing significant indirect costs for society.

121 The applicants maintain merely that the State is also exposed to indirect costs in the event of a financial crisis affecting credit institutions that are not liable to the tax. However, the applicants have not explained why the Commission should have had doubts as to the systemic importance of those credit institutions with regard to possible indirect costs or as to whether, by their failure, they could, on an individual basis, have such a negative impact on that system and on the economy in general that they would give rise to significant indirect costs for society. Furthermore, as is mentioned in paragraphs 80 and 81 above, the applicants acknowledged that the largest credit institutions generate greater indirect costs and have not called into question the ability of large credit institutions alone to cause, on an individual basis, through their failure, a systemic risk and to have a very negative impact on the financial system and on the economy in general and to generate significant indirect costs for society.

122 Moreover, the argument that all credit institutions are responsible for indirect costs for society in the event of a financial crisis must be rejected for the reasons set out in paragraph 80 above.

123 Therefore, the applicants have not demonstrated the existence of a body of consistent evidence capable of showing that the credit institutions whose liabilities exceeded the threshold were, in the light of the objective of the tax, in a factual and legal situation comparable to that of credit institutions whose liabilities did not exceed that threshold. Furthermore, as indicated in paragraph 96 above, it is clear from the file before the Court that there was no credit institution not liable to the tax whose level of liabilities was close to the threshold of SEK 150 thousand million. The Court recalls that, in accordance with the case-law cited in paragraph 24 above, it is not for the Court to determine whether there is conclusive evidence that there are no doubts as to the classification of the measure at issue as aid, but, on the contrary, it is for the Court to examine whether the applicant has adduced evidence that such doubts exist.

124 In the second place, first of all, as regards the existence of derogations relating to the treatment of other financial institutions, the Court notes that a mere competitive relationship cannot in itself lead to the conclusion that those institutions are, in the light of the objective of the tax, in a factual and legal situation comparable to that of credit institutions liable to that tax.

125 Next, the argument that the absence of requirements imposed on other financial institutions could represent an additional threat to financial stability and additional risks of indirect costs for the State must be rejected for the reasons set out in paragraph 78 above.

126 Lastly, the applicants complain that the Commission did not correctly assess the level of the combined liabilities of the mortgage funds. However, the applicants, without indicating the exact value of those liabilities, rely on certain total amounts of household mortgages, namely the respective amounts of SEK 19 thousand million (approximately EUR 1.68 thousand million) and SEK 35.1 thousand million (approximately EUR 3.1 thousand million). However – aside from the fact that those amounts relate to collective data concerning mortgage funds, whereas the tax threshold relates to data specific to each credit institution – the figures relied on do not come close to the tax threshold, namely SEK 150 thousand million.

127 It must therefore be concluded that the applicants' arguments concerning the existence of derogations from the reference system do not demonstrate that the Commission should have encountered serious difficulties in its assessment in that regard.

128 It follows from all the findings above that the applicants have not established that the Commission should have had doubts as to the classification of the tax within the meaning of Article 107(1) TFEU, which should have led it to initiate the formal investigation procedure. Consequently, the action must be dismissed in its entirety, without there being any need to have recourse to the measures of organisation of procedure requested by the applicants, since it is for the Court, in accordance with Article 90(1) of the Rules of Procedure, to order them only if it considers it appropriate to do so.

Costs

129 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.

130 As the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, in accordance with the form of order sought by the Commission.

131 The Kingdom of Sweden must bear its own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Ideella föreningen Svenska Bankföreningen med firma Svenska Bankföreningen, Näringsverksamhetand Länsförsäkringar Bank AB to pay, in addition to their own costs, those incurred by the European Commission;**

3. **Orders the Kingdom of Sweden to bear its own costs.**

Papasavvas	da Silva Passos	Jaeger
Gervasoni		Półtorak

Delivered in open court in Luxembourg on 17 April 2024.

V. Di Bucci	S. Papasavvas
Registrar	President

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* Language of the case: English.