

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that the defendant erred in law by concluding that the 'court proceedings' indent of Article 4.2 of Regulation 1049/2001/EC was not engaged in the present case, on the basis that the documentation was not a document 'prepared for the purpose of court proceedings'. As a matter of law, the defendant should have concluded that the exemption was engaged.
2. Second plea in law, alleging further or in the alternative that the only legally permissible outcome of a proper balancing exercise, under the 'commercial interests' indent of Article 4.2 of Regulation 1049/2001/EC, would have been a decision not to release the documentation, in light of: (i) the compelling weight of the applicants' private interest in avoiding disclosure; and (ii) the merely vague and generic public interest in disclosure.

Action brought on 3 July 2018 — de Volksbank v SRB

(Case T-406/18)

(2018/C 311/15)

Language of the case: English

Parties

Applicant: de Volksbank NV (Utrecht, Netherlands) (represented by: M. van Loopik, A. Kleinhout, A. ter Haar and T. Waterbolk, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

- annul the decision of the Single Resolution Board of 12 April 2018 on the calculation of ex ante contributions to the Single Resolution Fund for 2018 (SRB/ES/SRF/2018/3);
- in the alternative, annul the abovementioned contested decision and declare Commission Delegated Regulation 2015/63 ('the delegated regulation')⁽¹⁾ partly or fully inapplicable, in accordance with Article 277 TFEU;
- in any event, order the SRB to pay the costs of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging the breach of Article 103(2) of Directive 2014/59/EU,⁽²⁾ Article 70(2) of Regulation 806/2014⁽³⁾ and Article 4(1) of the delegated regulation, by using incomparable data to determine the applicant's net liabilities.
 - It follows from the text and objectives of Article 103(2) of Directive 2014/59/EU and Article 70(2) of Regulation 806/2014 that the SRB should use data from the same point or period in time to calculate net liabilities in accordance with those provisions.
 - It follows from the text and objectives of Article 4(1) of the delegated regulation, in the light of Directive 2014/59/EU and Regulation 806/2014, that the SRB must use comparable data in order to ensure a fair calculation of the contribution based on a bank's risk profile.

2. Second plea in law, alleging, in the alternative to the first plea, the breach of Article 103(2) and 103(7) of Directive 2014/59/EU and of Article 290 TFEU because the delegated regulation, as applied by the SRB in the contested decision, exceeds the mandate provided to the European Commission, resulting in the inapplicability of the delegated regulation, in accordance with Article 277 TFEU.
 - Contrary to Article 290 TFEU, the delegated regulation supplements essential elements of Directive 2014/59/EU.
 - If Articles 4(1), 4(2) and 16(2) of the delegated regulation can only be interpreted as meaning that the SRB must use incomparable data, the delegated regulation is not in overall compliance with the text and objectives of Directive 2014/59/EU.
 - In so far as the delegated regulation sets rules on the calculation of the basic annual contribution, the delegated regulation exceeds the content of the mandate provided by Article 103(7) of Directive 2014/59/EU.
3. Third plea in law, alleging breach of the principle of proportionality by not properly taking into account the applicant's covered deposits.
 - The SRB's calculation methodology is unsuitable to attain the objectives of Directive 2014/59/EU, Regulation 806/2014 and the delegated regulation.
 - The SRB's calculation methodology also goes beyond what is necessary to achieve the objectives pursued by the legislation.
4. Fourth plea in law, alleging breach of the principle of legal certainty by not properly taking into account the applicant's covered deposits.
 - The applicant could not have foreseen the SRB's interpretation of the delegated regulation.
5. Fifth plea in law, alleging breach of the principle of equal treatment by not properly taking into account the applicant's covered deposits.
 - The applicant has to pay a significantly higher Single Resolution Fund contribution than other banks with the same, or a similar, size and risk profile.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

⁽²⁾ 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).

⁽³⁾ 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).

Action brought on 18 July 2018 — Aeris Invest v ECB

(Case T-442/18)

(2018/C 311/16)

Language of the case: Spanish

Parties

Applicant: Aeris Invest Sàrl (Luxembourg, Luxembourg) (represented by: S. Chimenos Minguella and G. Ferrer González, lawyers)