

Action brought on 25 June 2021 — Portigon v SRB**(Case T-360/21)**

(2021/C 320/59)

*Language of the case: German***Parties**

Applicant: Portigon AG (Dusseldorf, Germany) (represented by: D. Bliesener, V. Jungkind and F. Geber, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision of 14 April 2021 on the calculation of the ex-ante contributions to the single resolution fund for 2021 (ref: SRB/ES/2021/22) in so far as the decision concerns the applicant;
- stay the present proceedings under Article 69(c) and (d) of the Rules of Procedure of the General Court until a final decision is issued in cases T-413/18, ⁽¹⁾ T-481/19, ⁽²⁾ T-339/20 ⁽³⁾ and T-424/20 ⁽⁴⁾ und C-664/20 P ⁽⁵⁾ or until those cases are otherwise brought to a conclusion;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action the applicant relies on the following pleas in law:

1. First plea, alleging infringement of Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014, ⁽⁶⁾ Council Implementing Regulation (EU) 2015/81 ⁽⁷⁾ and TFEU through increases in the amounts of the contributions to be paid by the applicant to the Fund.
 - The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution, since a mandatory contribution for institutions under resolution is not provided for under Regulation No 806/2014 or Directive 2014/59/EU of the European Parliament and of the Council. ⁽⁸⁾
 - The legislature was not entitled to base the obligation to pay a contribution on Article 114 TFEU owing to the lack of relevance to the internal market. Harmonised rules governing contributions throughout the European Union neither facilitate the exercise of fundamental freedoms nor remedy appreciable distortions of competition in relation to institutions that withdraw from the market;
 - The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution, since the institution has no risk exposure, there is no prospect of the institution entering into resolution in accordance with the rules of Regulation (EU) No 806/2014 and the institution is of no importance to the stability of the financial system.
 - Delegated Regulation (EU) 2015/63 ⁽⁹⁾ infringes Article 114 TFEU and Article 103(7) of Directive 2014/59/EU as an essential element relating to the calculation of the contribution (second sentence of Art. 290(1) TFEU).
2. Second plea, alleging infringement of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter'), on the ground that the calculation procedure does not allow for a complete statement of reasons for the contested decision. Delegated Regulation (EU) 2015/63 is partially ineffective.
3. Third plea, alleging infringement of Articles 16 and 20 of the Charter, since, in view of the special situation of the applicant, the contested decision is at variance with the general principle of equality and infringes the principle of freedom to conduct a business.

4. Fourth plea, alleging infringement of the essential formal requirements and possibly of Article 5(1) of Implementing Regulation (EU) 2015/81, as it is unclear whether the SRB Decision was authenticated. In addition, the defendant failed to clarify the situation sufficiently, did not grant the applicant a hearing before the adoption of the SRB decision and did not give sufficient reasons for its decision.
5. Fifth plea, alleging, in the alternative, infringement of Article 69(1) of Regulation No 806/2014 due to an excessive target level, since the defendant may have set the target level at no more than EUR 55.000.000.000.
6. Sixth plea, alleging, in the alternative, infringement of Article 70(2) of Regulation No 806/2014 in conjunction with Article 103(7) of Directive 2014/59/EU, since the defendant, in calculating the amount of the contribution, should have excluded risk-free liabilities from the relevant liabilities.
7. Seventh plea, alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014 in conjunction with Article 5(3) and (4) of Delegated Regulation (EU) 2015/63, since the defendant wrongly calculated the applicant's contribution on the basis of a gross approach with regard to derivative contracts.
8. Eighth plea, alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014 in conjunction with Article 6(8)(a) of Delegated Regulation (EU) 2015/63, since the defendant wrongly regarded the applicant as an institution undergoing reorganisation.

⁽¹⁾ OJ 2018 C 294, p. 41.

⁽²⁾ OJ 2019 C 305, p. 60.

⁽³⁾ OJ 2020 C 240, p. 34.

⁽⁴⁾ OJ 2020 C 279, p. 70.

⁽⁵⁾ OJ 2021 C 44, p. 35.

⁽⁶⁾ 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).

⁽⁷⁾ Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

⁽⁸⁾ 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).

⁽⁹⁾ 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).

Action brought on 25 June 2021 — Essity Hygiene and Health v EUIPO (Representation of a leaf)

(Case T-364/21)

(2021/C 320/60)

Language of the case: Swedish

Parties

Applicant: Essity Hygiene and Health AB (Gothenburg, Sweden) (represented by: U. Wennermark, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for registration of EU figurative mark representing a leaf — Application for registration No 16 709 305