Pleas in law and main arguments

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

1. First plea in law, alleging that the decision of 14 April 2021 infringes an essential procedural requirement within the meaning of the second paragraph of Article 263 TFEU because it has not been properly established.

2. Second plea in law, alleging that the decision of 14 April 2021 and Annexes I to III thereto infringe essential procedural requirements within the meaning of the second paragraph of Article 263 TFEU and the right to good administration in that they do not contain an adequate statement of reasons as required by the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter').

3. Third plea in law, alleging that the decision of 14 April 2021 and Annexes I to II thereto infringe the right to an effective remedy under the first paragraph of Article 47 of the Charter in that it is practically impossible to subject the substantive accuracy of the decision to effective judicial review.

4. Fourth plea in law, alleging that the decision of 14 April 2021 and the annexes thereto are unlawful because Articles 4 to 7 and 9 of Delegated Regulation (EU) 2015/63 ([1]) are unlawful. They infringe the institutions' right to effective judicial protection because they result in inherently opaque decisions adopted on the basis thereof.

5. Fifth plea in law, alleging that, if the view is taken that the opaque calculation of the institutions' contribution is already provided for in Article 70(2) of Regulation No 806/2014 ([2]) and Article 103(2) and (7) of Directive 2014/59, ([3]) those legal acts are unlawful for the reasons mentioned in the fourth plea in law and should therefore be declared inapplicable.

6. Sixth plea in law, alleging that the decision of 14 April 2021 infringes Articles 6, 7 and 20(1) of Delegated Regulation (EU) 2015/63 in that, in calculating the risk-adjustment multiplier, the defendant did not take account of the risk indicator Net Stable Funding Ratio ('NSFR'), the risk indicator Minimum Requirements for Own Funds and Eligible Liabilities ('MREL') or the risk indicators 'complexity' and 'resolvability'.

7. Seventh plea in law, alleging that the decision of 14 April 2021 and Annexes I to III thereto infringe essential procedural requirements within the meaning of the second paragraph of Article 263 TFEU and the right to good administration under Article 41(2)(a) of the Charter because the applicant was not heard before the decision was adopted.

([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]) 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).

([3]) 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).

Action brought on 7 July 2021 — Norddeutsche Landesbank — Girozentrale v SRB

(Case T-403/21)

(2021/C 368/43)

Language of the case: German

Parties

Applicant: Norddeutsche Landesbank — Girozentrale (Hanover, Germany) (represented by: D. Flore and J. Seitz, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

As successor in law to Deutsche Hypothekenbank (Actien-Gesellschaft), the applicant claims that the Court should:

— annul the decision of the defendant of 14 April 2021 (SRB/ES/2021/22) including the annexes thereto, in particular Annex I concerning the 'Results of the calculation with respect to all institutions falling within the scope of calculation of the 2021 ex-ante contributions set separately (per institution) in the Harmonized Annexes', in so far as they are each relevant to the applicant;

— 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 in law, alleging an infringement of the right to be heard

   — The defendant failed to hear Deutsche Hypothekenbank before adopting the contested decision, thereby infringing Article 41(1) and (2)(a) of the Charter of Fundamental Rights of the European Union ('the Charter').

2. Second plea in law, alleging an infringement of procedural rules

   — The contested decision is invalid because it was adopted in breach of general procedural requirements deriving from Article 41 of the Charter, Article 298 TFEU, general principles of law and the defendant's Rules of Procedure.

3. Third plea in law, alleging a failure to state reasons for the contested decision

   — Contrary to Article 296 TFEU, the contested decision does not contain a sufficient statement of reasons; in particular, it lacks a statement of reasons relating to the individual case and a description of the fundamental considerations in the context of proportionality and discretion.

   — Moreover, the calculation of the annual contribution is not comprehensible, in particular due to the use of inconsistent terms and the failure to show key intermediate steps.

4. Fourth plea in law, alleging an infringement of the fundamental right to effective judicial protection for lack of verifiability of the contested decision

   — The failure to state reasons for the contested decision makes judicial review considerably more difficult.

   — In particular, the defendant infringed the principle of audi alteram partem, according to which the parties must be able to discuss both the factual and legal circumstances which are decisive for the outcome of the proceedings.

5. Fifth plea in law, alleging that the application of the IPS (Institutional Protection Scheme) indicator infringes higher-ranking law

   — In applying the IPS indicator, the significance of Deutsche Hypothekenbank's membership of the institutional guarantee scheme of the Sparkassen-Finanzgruppe (Savings Banks Finance Group) was misjudged.

   — Under the second sentence of Article 6(5) of Delegated Regulation (EU) 2015/63, ([1]) the defendant should also have taken account of the low probability of the institution concerned being resolved and thus of the use of the Single Resolution Fund and should have observed the principle of proportionality.

6. Sixth plea in law, alleging that the consideration of the overall derivative risk position within the framework of the risk indicator 'trading activities, off-balance sheet exposures, derivatives, complexity and resolvability' infringes Delegated Regulation (EU) 2015/63, which must be interpreted in the light of higher-ranking law

   — In accordance with the requirement of orientation towards the risk profile, the defendant should also have taken into account, when considering the overall derivative risk position in the context of point (a) of the first sentence of Article 6(5), Article 6(6) and point (a) of the first sentence of Article 7(4) of Delegated Regulation (EU) 2015/63, that in the case of Deutsche Hypothekenbank all derivatives are allocated to the non-trading portfolio and serve exclusively for hedging purposes, and that Deutsche Hypothekenbank has a low level of complexity and a high level of resolvability.

7. Seventh plea in law, alleging that the failure to take account of the MREL (Minimum Requirements for Own Funds and Eligible Liabilities) within the framework of the 'risk exposure' pillar infringes Delegated Regulation (EU) 2015/63

   — In accordance with Article 6(1)(a) and (2)(a) of Delegated Regulation (EU) 2015/63, the defendant should have taken account of the applicant's higher-than-average MREL ratio of 67.6 %, which significantly exceeded the minimum ratio of 8 % set by the Single Resolution Board.

8. Eighth plea in law, alleging that the application of the risk-adjustment multiplier infringes Delegated Regulation (EU) 2015/63, which must be interpreted in the light of higher-ranking law

   — When setting the risk-adjustment multiplier, the defendant should have taken into account the applicant's low probability of default and higher-than-average MREL ratio in accordance with the principle of orientation towards the risk profile and the fundamental right to entrepreneurial freedom under Article 16 of the Charter.

9. Ninth plea in law (in the alternative), alleging that the second sentence of Article 7(4) of Delegated Regulation (EU) 2015/63 infringes higher-ranking law

   — By providing for a relativisation of the IPS indicator, the second sentence of Article 7(4) of Delegated Regulation (EU) 2015/63 infringes the general principle of equality under Article 20 of the Charter and the principle of proportionality, since institutions which are subject to the same institutional guarantee and thus have the same probability of default may be treated differently.

10. Tenth plea in law, alleging that the definition of 'interbank deposits' provided for in Step 1 of Annex I to Delegated Regulation (EU) 2015/63 infringes higher-ranking law

    — The definition of 'interbank deposits' provided for in Step 1 of Annex I to Delegated Regulation (EU) 2015/63 is unlawful because risk-neutral securities, such as registered Pfandbriefe, should not, due to their coverage, be taken into account in the calculation of the risk indicator 'interbank loans and deposits'.

11. Eleventh plea in law, alleging that the assignment to bins pursuant to Step 2 of Annex I to Delegated Regulation (EU) 2015/63 infringes higher-ranking law

    — The assignment to bins laid down in Step 2 of Annex I to Delegated Regulation (EU) 2015/63 is unlawful because the small number of bins and the identical number of institutions per bin do not enable sufficient differentiation to be made when considering the risk profile of the institution concerned, as in the case of Deutsche Hypothekenbank, for example.

([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).

Action brought on 9 July 2021 — Germany v Commission

(Case T-409/21)

(2021/C 368/44)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: J. Möller and R. Kanitz, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision of 3 June 2021 on State aid SA.56826 (2020/N) — Germany — 2020 reform of support for cogeneration and State aid SA.53308 (2019/N) — Germany — Change of support to existing CHP plants (§ 13 KWKG), to the extent that it finds that

   (a) the support to the production of CHP electricity in new, modernised and retrofitted highly efficient CHP installations,