

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for European Union figurative mark PYLOMED — Application for registration No 18 132 059

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 January 2022 in Case R 814/2021-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 15 March 2022 — Landesbank Baden-Württemberg v SRB

(Case T-142/22)

(2022/C 198/79)

Language of the case: German

Parties

Applicant: Landesbank Baden-Württemberg (Stuttgart, Germany) (represented by: H. Berger and M. Weber, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Single Resolution Board of 15 December 2021 on the calculation of the 2017 ex ante contributions of the Landesbank Baden-Württemberg to the Single Resolution Fund (SRB/ES/2021/82), including the annexes thereto;
- order the defendant to pay the costs of the proceedings.

In the alternative, in the event that the Court takes the view that the contested decision is legally non-existent as a result of the use of the incorrect official language by the defendant and the action for annulment would therefore be inadmissible on the ground that it would be devoid of purpose, the applicant claims that the Court should:

- declare that the contested decision is legally non-existent;
- 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 nine pleas in law.

1. First plea in law: The decision infringes Article 81(1) of Regulation (EU) No 806/2014, ⁽¹⁾ in conjunction with Article 3 of Council Regulation No 1 of 15 April 1958, ⁽²⁾ and the general principle of equality, because it is not worded in the official language of German, which is to be used with the applicant, and deviates from the language used for decisions issued to other German institutions.
2. Second plea in law: The decision infringes the obligation to state reasons laid down in the second paragraph of Article 296 TFEU and Article 41(1) and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter') because it contains numerous instances of failure to state reasons, in particular with regard to the use by the defendant of numerous discretionary powers conferred by law, and is not comprehensible and transparent.
3. Third plea in law: The decision infringes the requirement of effective legal protection under the first paragraph of Article 47 of the Charter because judicial review of the decision is practically impossible, thus impairing the applicant's effective legal protection.
4. Fourth plea in law: The second sentence of Article 7(4) of the delegated regulation ⁽³⁾ infringes higher-ranking law because it allows for an objectively inappropriate and disproportionate differentiation to be made between the members of an Institutional Protection Scheme (IPS) and for the IPS indicator to be relativised.
5. Fifth plea in law: The decision infringes, inter alia, Article 113(7) of Regulation (EU) No 575/2013 ⁽⁴⁾ and the requirement of risk-appropriate assessment of contributions because it uses a multiplier of 5/9 for the IPS indicator in the case of the applicant. A differentiation between institutions at the level of the IPS indicator is, on account of the extensive protective effect of an IPS, incompatible with the scheme and arbitrary.
6. Sixth plea in law: Articles 6, 7 and 9 of and Annex I to the delegated regulation infringe higher-ranking law, inter alia because they infringe the requirement of risk-appropriate assessment of contributions, the principle of proportionality and the requirement to take full account of the facts.
7. Seventh plea in law: The decision infringes the applicant's freedom to conduct a business under Article 16 of the Charter and the principle of proportionality because the underlying risk-adjustment multipliers are not commensurate with the applicant's risk profile, which is better than average.
8. Eighth plea in law: The decision infringes Articles 16 and 20 of the Charter as well as the principle of proportionality and the right to good administration on account of obvious errors in the exercise by the defendant of numerous discretionary powers.
9. Ninth plea in law: The first and second sentences of Article 20(1) of the delegated regulation infringe Article 103(7) of Directive 2014/59/EU ⁽⁵⁾ and the requirement of risk-appropriate assessment of contributions.

⁽¹⁾ 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).

⁽²⁾ Regulation No 1 determining the languages to be used by the European Economic Community (OJ 1958 L 17, p. 385).

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ 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).