

GENERAL COURT

Action brought on 27 June 2022 — Hypo Vorarlberg Bank v SRB

(Case T-395/22)

(2022/C 368/42)

Language of the case: German

Parties

Applicant: Hypo Vorarlberg Bank AG (Bregenz, Austria) (represented by: G. Eisenberger and A. Brenneis, 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 11 April 2022 on the calculation of the 2022 ex ante contributions to the Single Resolution Fund (SRB/ES/2022/18), including the annexes thereto, in any event in so far as it concerns the applicant; and
- order the Single Resolution Board to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements due to a lack of full disclosure of the contested decision

The contested decision was not fully disclosed to the applicant, contrary to the second paragraph of Article 1 TEU, Articles 15, 296 and 298 TFEU and Articles 42 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). Knowledge of the information that was not communicated is necessary, as a central component of the decision, in order to be able to understand the contribution calculations and verify how the applicant's individual situation, relative to the situation of all other institutions concerned, was taken into account in calculating the contributions.

2. Second plea in law, alleging infringement of Article 102 of Directive 2014/59/EU, ⁽¹⁾ Article 69(1) and (2) and Article 70(2) of Regulation (EU) No 806/2014, ⁽²⁾ Article 3 and Article 4(2) of Delegated Regulation (EU) 2015/63, ⁽³⁾ and the principle of proportionality due to an incorrect setting of the target level, since the defendant set an excessive target level contrary to the EU legal framework.
3. Third plea in law, alleging infringement of essential procedural requirements due to a failure to state adequate reasons for the contested decision

The contested decision infringes the obligation to state reasons under the second paragraph of Article 296 TFEU and Article 41(1) and (2)(c) of the Charter, since only a small number of selected partial calculation results were disclosed. The requirements set down by the Court of Justice in Case C-584/20 P ⁽⁴⁾ regarding the scope of the obligation to state reasons were not observed. The defendant did not exercise the option of disclosing data that is to be treated confidentially in accordance with Article 88(1) of Regulation (EU) No 806/2014 in summary or collective form.

4. Fourth plea in law, alleging infringement of essential procedural requirements due to a failure to state adequate reasons for the exercise of significant discretionary powers

The contested decision infringes the obligation to state reasons under the second paragraph of Article 296 TFEU and Article 41(1) and (2)(c) of the Charter, since, as regards the defendant's discretionary powers, it was not explained which assessments the defendant made on which grounds. An arbitrary exercise of discretion by the defendant therefore cannot be excluded.

5. Fifth plea in law, alleging infringement of essential procedural requirements due to the absence of a hearing and a failure to respect the right to be heard

The applicant was not granted the right to be heard either before the contested decision was adopted or before the contribution notice based on that decision was issued, contrary to Article 41(1) and (2)(a) of the Charter. In addition, the consultation carried out by the defendant did not provide an opportunity to comment effectively and fully on the actual contribution calculation.

6. Sixth plea in law, alleging the unlawfulness of Delegated Regulation (EU) 2015/63 as a legal basis for the contested decision and the unlawfulness of the risk adjustment methodology laid down in Delegated Regulation (EU) 2015/63 and of the discretionary powers granted to the SRB

Articles 4 to 7 and Article 9 of, and Annex I to, Delegated Regulation (EU) 2015/63, on which the contested decision is based, create a non-transparent system for determining contributions which is contrary to Articles 16, 17, 41 and 47 of the Charter, and under which compliance with Articles 20 and 21 of the Charter and observance of the principles of proportionality and legal certainty are not guaranteed. The defendant enjoys numerous discretionary powers, the exercise of which is not subject to any comprehensible or verifiable statement of reasons.

7. Seventh plea in law, alleging the unlawfulness of Implementing Regulation (EU) 2015/81⁽¹⁾ as a legal basis for the contested decision

The contested decision infringes the Treaties, since Article 8 of Implementing Regulation (EU) 2015/81 exceeds the limits laid down by Article 70(7) of Regulation (EU) No 806/2014 read in conjunction with Article 291 TFEU, and neither the Implementing Regulation nor the legal basis provides a statement of reasons in accordance with the second paragraph of Article 296 TFEU. That unlawfulness affects the contested decision by extension.

8. Eighth plea in law, alleging the unlawfulness of Directive 2014/59/EU and of Regulation (EU) No 806/2014 as a legal basis for Delegated Regulation (EU) 2015/63 and for Implementing Regulation (EU) 2015/81, and therefore for the contested decision

In the alternative, the applicant alleges that the provisions of Directive 2014/59/EU and Regulation (EU) No 806/2014 which prescribe the contribution system implemented by way of Delegated Regulation (EU) 2015/63 and grant the defendant far-reaching discretionary powers, are unlawful. In so far as those provisions are not capable of being interpreted in conformity with primary law, they are contrary to the principle of providing reasons for legal acts, the principle of legal certainty, the Treaties (in particular the second paragraph of Article 1 TEU, and Articles 15, 296 and 298 TFEU) and the Charter (in particular Articles 16, 17, 41, 42 and 47 thereof).

⁽¹⁾ 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).

⁽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⁾ 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⁾ Judgment of 15 July 2021, *Commission v Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601.

⁽⁵⁾ 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).