Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 July 2021 *

(Appeal – Banking union – Single Resolution Mechanism (SRM) – Single Resolution Fund (SRF) – Calculation of the 2017 *ex ante* contributions – Authentication of a decision of the Single Resolution Board (SRB) – Obligation to state reasons – Confidential data – Legality of Delegated Regulation (EU) 2015/63)

In Joined Cases C-584/20 P and C-621/20 P,

TWO APPEALS pursuant to Article 56 of the Statute of the Court of Justice of the European Union, brought, respectively, on 6 and 20 November 2020,

European Commission, represented by D. Triantafyllou, A. Nijenhuis, V. Di Bucci and A. Steiblytė, acting as Agents,

appellant in Case C-584/20 P,

supported by:

Kingdom of Spain, represented by J. Rodríguez de la Rúa Puig, acting as Agent,

intervener in the appeal,

the other parties to the proceedings being:

Landesbank Baden-Württemberg, established in Stuttgart (Germany), represented by H. Berger and M. Weber, Rechtsanwälte,

applicant at first instance,

supported by:

Fédération bancaire française, established in Paris (France), represented by A. Gosset-Grainville, M. Trabucchi and M. Dalon, avocats,

intervener in the appeal,

Single Resolution Board (SRB), represented by K.-P. Wojcik, P.A. Messina, J. Kerlin and H. Ehlers, acting as Agents, and H.-G. Kamann and P. Gey, Rechtsanwälte, and F. Louis, avocat,

* Language of the case: German.

defendant at first instance,

and

Single Resolution Board (SRB), represented by K.-P. Wojcik, P.A. Messina, J. Kerlin and H. Ehlers, acting as Agents, and H.-G. Kamann and P. Gey, Rechtsanwälte, and F. Louis, avocat,

appellant in Case C-621/20 P,

supported by:

Kingdom of Spain, represented by J. Rodríguez de la Rúa Puig, acting as Agent,

intervener in the appeal,

the other parties to the proceedings being:

Landesbank Baden-Württemberg, established in Stuttgart (Germany), represented by H. Berger and M. Weber, Rechtsanwälte,

applicant at first instance,

supported by:

Fédération bancaire française, established in Paris (France), represented by A. Gosset-Grainville, M. Trabucchi and M. Dalon, avocats,

intervener in the appeal,

European Commission, represented by D. Triantafyllou, A. Nijenhuis, V. Di Bucci and A. Steiblytė, acting as Agents,

intervener at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, M. Vilaras, E. Regan, M. Ilešič, L. Bay Larsen (Rapporteur), A. Kumin and N. Wahl, Presidents of Chambers, T. von Danwitz, M. Safjan, C. Lycourgos, I. Jarukaitis, N. Jääskinen and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 23 March 2021,

after hearing the Opinion of the Advocate General at the sitting on 27 April 2021,

gives the following

Judgment

1 By their respective appeals, the European Commission and the Single Resolution Board (SRB) ask the Court to set aside the judgment of the General Court of the European Union of 23 September 2020, *Landesbank Baden-Württemberg* v *SRB* (T-411/17, 'the judgment under appeal', EU:T:2020:435) by which the General Court annulled the decision of the Executive Session of the SRB of 11 April 2017 on the calculation of the 2017 *ex ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05) ('the decision at issue') in so far as it concerns Landesbank Baden-Württemberg.

Legal context

Directive 2014/59/EU

2 Recitals 105 to 107 of 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) are worded as follows:

'(105) As a principle, contributions should be collected from the industry prior to and independently of any operation of resolution. When prior funding is insufficient to cover the losses or costs incurred by the use of the financing arrangements, additional contributions should be collected to bear the additional cost or loss.

(106) In order to reach a critical mass and to avoid pro-cyclical effects which would arise if financing arrangements had to rely solely on *ex post* contributions in a systemic crisis, it is indispensable that the *ex ante* available financial means of the national financing arrangements amount at least to a certain minimum target level.

(107) In order to ensure a fair calculation of contributions and provide incentives to operate under a less risky model, contributions to national financing arrangements should take account of the degree of credit, liquidity and market risk incurred by the institutions.'

3 Article 102(1) of that directive states:

'Member States shall ensure that, by 31 December 2024, the available financial means of their financing arrangements reach at least 1% of the amount of covered deposits of all the institutions authorised in their territory. Member States may set target levels in excess of that amount.'

4 Article 103 of that directive provides:

'1. In order to reach the target level specified in Article 102, Member States shall ensure that contributions are raised at least annually from the institutions authorised in their territory including Union branches.

2. The contribution of each institution shall be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of the Member State.

Those contributions shall be adjusted in proportion to the risk profile of institutions, in accordance with the criteria adopted under paragraph 7.

…

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 115 in order to specify the notion of adjusting contributions in proportion to the risk profile of institutions as referred to in paragraph 2 of this Article, taking into account all of the following:

(a) the risk exposure of the institution, including the importance of its trading activities, its off-balance sheet exposures and its degree of leverage;

(b) the stability and variety of the company's sources of funding and unencumbered highly liquid assets;

(c) the financial condition of the institution;

(d) the probability that the institution enters into resolution;

(e) the extent to which the institution has previously benefited from extraordinary public financial support;

(f) the complexity of the structure of the institution and its resolvability;

(g) the importance of the institution to the stability of the financial system or economy of one or more Member States or of the Union;

(h) the fact that the institution is part of an IPS [(institutional protection scheme)].'

Regulation (EU) No 806/2014

5 Recital 41 of 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) states:

'In the light of the Board's missions and the resolution objectives which include the protection of public funds, the functioning of the [Single Resolution Mechanism (SRM)] should be financed from contributions paid by the institutions established in the participating Member States.'

6 Article 69(1) of that regulation provides:

'By the end of an initial period of eight years from 1 January 2016 …, the available financial means of the [Single Resolution Fund (SRF)] shall reach at least 1% of the amount of covered deposits of all credit institutions authorised in all of the participating Member States.'

7 Article 70(1) and (2) of the regulation provides:

‘1. The individual contribution of each institution shall be raised at least annually and shall be calculated pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits, of all of the institutions authorised in the territories of all of the participating Member States.

2. Each year, the [SRB] shall, after consulting the [European Central Bank (ECB)] or the national competent authority and in close cooperation with the national resolution authorities, calculate the individual contributions to ensure that the contributions due by all of the institutions authorised in the territories of all of the participating Member States shall not exceed 12.5% of the target level.

Each year the calculation of the contributions for individual institutions shall be based on:

(a) a flat contribution, that is pro rata based on the amount of an institution’s liabilities excluding own funds and covered deposits, with respect to the total liabilities, excluding own funds and covered deposits, of all of the institutions authorised in the territories of the participating Member States; and

(b) a risk-adjusted contribution, that shall be based on the criteria laid down in Article 103(7) of Directive [2014/59], taking into account the principle of proportionality, without creating distortions between banking sector structures of the Member States.

The relation between the flat contribution and the risk-adjusted contributions shall take into account a balanced distribution of contributions across different types of banks.

…’

8 Article 88(1) of the regulation reads as follows:

Members of the Board, the Vice-Chair, … the staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased. They shall in particular be prohibited from disclosed confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with their functions under this Regulation, to any person or authority, unless it is in the exercise of their functions under this Regulation or in summary or collective form such that the entities referred to in Article 2 cannot be identified or with the express and prior consent of the authority or the entity which provide the information.

Information subject to the requirements of professional secrecy shall not be disclosed to another public or private entity except where such disclosure is due for the purpose of legal proceedings.’

Delegated Regulation (EU) 2015/63

9 Article 4 of 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) states:

‘1. The resolution authorities shall determine the annual contributions to be paid by each institution in proportion to its risk profile on the basis of information provided by the institution … and by applying the methodology set out in this Section.

2. The resolution authority shall determine the annual contribution referred to in paragraph 1 on the basis of the annual target level of the resolution financing arrangement by taking into account the target level to be reached by 31 December 2024 in accordance with paragraph 1 of Article 102 of Directive [2014/59], and on the basis of the average amount of covered deposits in the previous year, calculated quarterly, of all the institutions authorised in its territory.’

10 Article 5 of that delegated regulation sets out the principles for the risk adjustment of the basic annual contributions.

11 Article 6 of the delegated regulation defines the risk pillars and indicators, and their relative weighting is laid down in Article 7 thereof.

12 Article 9 of Delegated Regulation 2015/63 provides:

‘1. The resolution authority shall determine the additional risk adjusting multiplier for each institution by combining the risk indicators referred to in Article 6 in accordance with the formula and the procedures set out in Annex I.

2. Without prejudice to Article 10, the annual contribution of each institution shall be determined for each contribution period by the resolution authority by multiplying the basic annual contribution by the additional risk adjusting multiplier in accordance with the formula and the procedures set out in Annex I.

3. The risk adjusting multiplier shall range between 0.8 and 1.5.’

13 Article 13(1) of that delegated regulation provides:

‘The resolution authority shall notify each institution referred to in Article 2 of its decision determining the annual contribution due by each institution at the latest by 1 May each year.’

14 Annex I to the delegated regulation is entitled ‘Procedure for the calculation of the annual contributions of institutions’ and sets out the steps to be followed by the SRB in calculating the *ex ante* contributions to the SRF.

Background to the dispute

15 By the decision at issue, the SRB decided on the amount of the *ex ante* contributions to the SRF for 2017, including the amount of the contribution of Landesbank Baden-Württemberg, a credit institution established in Germany.

16 By assessment notice of 21 April 2017, received by Landesbank Baden-Württemberg on 24 April 2017, the Bundesanstalt für Finanzmarktstabilisierung (Federal Agency for Financial Market Stabilisation, Germany) informed Landesbank Baden-Württemberg that the SRB had set its 2017 *ex ante* contribution to the SRF and indicated the amount to be paid to the Restrukturierungsfonds (Restructuring Fund, Germany). Two documents were enclosed with that assessment notice, namely a German language version of the text of the decision at issue, without the annex to which that text refers, and a document entitled 'Details of the (risk-adjusted) calculation: 2017 *ex ante* contributions to the [SRF]' ('the Harmonised Annex').

The action before the General Court and the judgment under appeal

17 By application lodged at the Registry of the General Court on 30 June 2017, Landesbank Baden-Württemberg brought an action for the annulment of the decision at issue.

18 In support of its action, Landesbank Baden-Württemberg relied on six pleas in law. Those pleas alleged: first, infringement of Article 296 TFEU and of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') due to the fact that the decision at issue failed to state adequate reasons; second, infringement of Article 41 of the Charter due to the absence of an opportunity for Landesbank Baden-Württemberg to be heard; third, infringement of Article 47 of the Charter due to the fact that that decision was not subject to review; fourth, infringement of several provisions of secondary legislation and of Articles 16 and 20 of the Charter, due to the application of the multiplier for the 'institutional protection scheme' indicator; fifth, infringement of Article 16 of the Charter and of the principle of proportionality, as a consequence of the application of the risk adjusting multiplier; sixth, illegality of Articles 4 to 7 and 9 of Delegated Regulation 2015/63 and of Annex I to that delegated regulation.

19 By decision of 13 November 2017, the Commission was granted leave to intervene in support of the form of order sought by the SRB.

20 By measure of organisation of procedure and three orders relating to measures of inquiry, the General Court requested the SRB to provide certain information and produce several documents, including the complete original copy of the decision at issue as well as the annex thereto.

21 By the judgment under appeal, the General Court annulled the decision at issue, in so far as it concerned Landesbank Baden-Württemberg, and ordered that the effects of that decision be maintained for six months from the day on which that judgment became final.

22 In the first place, the General Court examined of its own motion the issue of failure to authenticate the decision at issue.

23 In that regard, it noted, in paragraphs 46 and 47 of the judgment under appeal, that, although the SRB had produced signed copies both of the version of the body of the decision at issue and of the routing slip relating to the file, it had not produced any evidence that the annex to that decision, which constituted an essential component thereof, had been authenticated. In particular, the General Court pointed out, in paragraph 51 of the judgment under appeal, that the SRB had not shown that that annex had been signed electronically.

24 In paragraph 52 of the judgment under appeal, the General Court stated that the argument put forward by the SRB at the hearing that that annex was available in a document management system known as the 'Advanced Records System' ('ARES') when the routing slip was signed was a new argument and therefore inadmissible and, in any event, unsubstantiated. In paragraph 53 of that judgment, the General Court thus noted that the routing slip produced by the SRB did not contain any information substantiating that argument or making it possible to show that there was an inextricable link between that slip and a document available in ARES corresponding to the annex to the decision at issue.

25 The General Court therefore found, in paragraph 55 of the judgment under appeal, that the requirement that the decision at issue be authenticated had not been met.

26 In the second place, the General Court considered it appropriate, in the interests of the proper administration of justice, to examine the first, third and sixth pleas put forward by Landesbank Baden-Württemberg, which it upheld.

27 The General Court first examined whether there had been a failure to fulfil the obligation to state reasons or non-compliance with the right to effective judicial protection.

28 In paragraphs 95 to 98 of the judgment under appeal, the General Court found that the decision at issue barely contained any of the information used for calculating Landesbank Baden-Württemberg's 2017 *ex ante* contribution to the SRF and that, although the Harmonised Annex contained other calculation factors, it did not contain sufficient information to verify the accuracy of that contribution. The General Court found, in particular, that that document did not contain any factors relating to the other banking institutions affected by that calculation, whereas, pursuant to, inter alia, Articles 4 to 7 and 9 of Delegated Regulation 2015/63, the calculation of the contribution should have involved both a pro rata calculation of Landesbank Baden-Württemberg's liabilities, with respect to the total liabilities of those other institutions, and an assessment of its risk profile as compared with the risk profiles of those other institutions.

29 The General Court also added, in paragraphs 100 and 102 of the judgment under appeal, that, having regard to the confidential nature of the data taken into account for calculating Landesbank Baden-Württemberg's 2017 *ex ante* contribution to the SRF, its method of calculation was inherently opaque and adversely affected the applicant's ability to dispute the decision at issue effectively. Accordingly, the General Court held, in paragraph 109 of that judgment, that the statement of reasons given to Landesbank Baden-Württemberg put it in a position where it could not know whether the amount of that contribution had been calculated correctly or whether it should dispute that amount before the EU Courts.

30 The General Court concluded, in paragraph 110 of the judgment under appeal, that the SRB had infringed the obligation to state reasons.

31 Second, it held, in paragraph 127 of that judgment, that the possibility for the Court to request that the SRB adduce information for the purposes of its review of the legality of the decision at issue could not alter, in the present case, the finding that there had been an infringement of the obligation to state reasons; nor could it guarantee that Landesbank Baden-Württemberg's right to effective judicial protection had been respected.

32 Third, the General Court ruled on the plea of illegality raised by Landesbank Baden-Württemberg.

33 In that regard, the General Court considered, in paragraph 129 of the judgment under appeal, that the fact that the method for calculating the *ex ante* contributions to the SRF was opaque stemmed, at least in part, from Delegated Regulation 2015/63. It therefore held, in paragraph 141 of that judgment, that the infringement of the obligation to state reasons established in that judgment stemmed, in respect of the part of the calculation of those contributions relating to the risk adjustment, from the illegal nature of Articles 4 to 7 and 9 of Delegated Regulation 2015/63 and of Annex I thereto.

Forms of order sought

34 By its appeal in Case C-584/20 P, the Commission claims that the Court should:

– set aside the judgment under appeal; and

– order Landesbank Baden-Württemberg to pay the costs of the appeal.

35 By its appeal in Case C-621/20 P, the SRB claims that the Court should:

– set aside the judgment under appeal;

– dismiss the application brought by Landesbank Baden-Württemberg; and

– order Landesbank Baden-Württemberg to pay the costs of the proceedings at first instance and on appeal.

36 Landesbank Baden-Württemberg claims that the Court should:

– dismiss the appeals; and

– order the Commission and the SRB to pay the costs.

Procedure before the Court of Justice

37 By separate documents lodged at the Registry of the Court of Justice when they lodged their respective appeals, the Commission and the SRB requested that the present cases be dealt with under the expedited procedure provided for in Articles 133 to 136 of the Rules of Procedure of the Court of Justice, applicable to the appeal pursuant to Article 190(1) of those rules.

38 In support of their claims, the Commission and the SRB have submitted, in essence, that the judgment under appeal had major consequences for the annual calculation of *ex ante* contributions to the SRF, that it was necessary to clarify at the earliest opportunity the legal framework governing that calculation in order to enable the SRB to acquire the financial capacity required by its role and that, pending that clarification, a large number of actions were likely to be brought before the EU Courts.

39 It follows from Article 133 of the Rules of Procedure of the Court of Justice that, at the request of the applicant or the defendant, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the other party, the Judge-Rapporteur and the Advocate General, decide that a case is to be determined pursuant to an expedited procedure derogating from the provisions of those rules.

40 On 4 and 8 December 2020, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to grant the requests of the Commission and the SRB.

41 The judgment under appeal calls into question the procedures followed within the SRB to ensure the authentication of, and reasoning for, decisions fixing *ex ante* contributions to the SRF and the legality of essential requirements for the method of calculating those contributions. It follows that, since the delivery of that judgment, the SRB has been exposed to significant uncertainty as to the procedures and method of calculation to be applied for that purpose, whereas it is required, under Article 13(1) of Delegated Regulation 2015/63, to notify each institution concerned of its decision determining the annual contribution to the SRF due by each institution at the latest by 1 May each year.

42 In the light of the importance of the role of the SRF in the context of the banking union, such continuing uncertainty as to the conditions governing its financing would be liable to have a significant, systemic adverse effect on the functioning of that union and therefore on the stability of the euro area. It is therefore necessary, in order to prevent any obstacle to the process of collecting the contributions ensuring that financing, to remove as soon as possible that uncertainty (see, by analogy, orders of the President of the Court of 4 October 2012, *Pringle*, C-370/12, not published, EU:C:2012:620, paragraphs 7 and 8; and of 12 June 2018, *ECB* v *Latvia*, C-238/18, not published, EU:C:2018:488, paragraph 17).

43 In accordance with Article 54(2) of the Rules of Procedure of the Court, the President of the Court decided, on 12 February 2021, to join the present cases for the purposes of the oral part of the procedure and of the judgment.

44 By orders of the President of the Court of 25 February 2021, *Commission* v *Landesbank Baden-Württemberg and SRB* (C-584/20 P, not published, EU:C:2021:150), and *SRB* v *Landesbank Baden-Württemberg* (C-621/20 P, not published, EU:C:2021:151), Fédération bancaire française was granted leave to intervene in support of the form of order sought by Landesbank Baden-Württemberg.

45 By order of the President of the Court of 12 March 2021, *Commission and SRB* v *Landesbank Baden-Württemberg* (C-584/20 P and C-621/20 P, not published, EU:C:2021:261), the Kingdom of Spain was granted leave to intervene in support of the form of order sought by the Commission and the SRB.

The appeals

46 The Commission puts forward five grounds of appeal in support of its appeal in Case C-584/20 P. The first ground of appeal alleges, in its first limb, distortion of the facts and, in the second limb, infringement of the principle of *audi alteram partem* and of the rights of the defence, as regards the finding by the General Court that the decision at issue had not been

authenticated. The second to fifth grounds of appeals are based, respectively, on an error of law and a failure to state reasons as regards the admissibility of the plea of illegality upheld by the General Court, two errors in the interpretation of Regulation No 806/2014 and an erroneous extension of the scope of the obligation to state reasons under Article 296 TFEU.

47 In support of its appeal in Case C-621/20 P, the SRB relies on two grounds of appeal alleging, first, infringement of Article 85(3) of the Rules of Procedure of the General Court, distortion of the evidence and infringement of the right to a fair hearing, as regards the finding by the General Court that the decision at issue had not been authenticated, and, second, infringement of Article 296 TFEU and Article 47 of the Charter.

The second limb of the first ground of appeal in Case C-584/20 P and the third limb of the first ground of appeal in Case C-621/20 P

Arguments of the parties

48 By the second limb of the first ground of appeal in Case C-584/20 P and by the third limb of the first ground of appeal in Case C-621/20 P, which it is appropriate to examine first, the Commission and the SRB, supported by the Kingdom of Spain, claim that the General Court infringed the principle of *audi alteram partem*, the SRB's rights of defence and its right to a fair hearing.

49 They consider that the SRB was not in a position effectively to adopt a position on the plea, raised by the General Court of its own motion, alleging lack of sufficient evidence of the authentication of the decision at issue.

50 According to the SRB, the right of the parties to be heard implies that they have access to the pleas in law raised by the General Court of its own motion and that they may discuss them effectively. The SRB should therefore have had the opportunity to familiarise itself with the issues raised before the General Court in some form and within a reasonable period of time in which to be able to express its views effectively on those issues.

51 The SRB states, in that regard, that the question of the authentication of that decision had not been the subject of exchanges during the written phase of the procedure prior to the hearing held before the General Court, that that court had not stated, at least at the hearing, that the evidence provided by the SRB was insufficient and that that court had refused the SRB's offer of evidence on that occasion. Since compliance with the requirement of authentication is ordinarily presumed, the General Court could not simply formulate questions of fact but should have taken further measures of inquiry, rather than relying on a mere lack of evidence.

52 If the General Court had given the SRB the possibility of deepening the issue of authentication of the decision at issue, the SRB would have established that the routing slip on which it relies had been generated automatically within ARES, it would have provided a screenshot showing the content of ARES at the time of the signature and it would have demonstrated that ARES was both a closed system and secure.

53 Landesbank Baden-Württemberg considers that that argument is unfounded.

54 It maintains that the purpose of the measure of organisation of procedure and of the measures of inquiry adopted at first instance was the authentication of the decision at issue, in so far as the invitation to produce the original of that decision, including its annex, related to the authenticated version of that decision. The SRB, which allegedly produced a routing slip in response to those measures, should have explained, without waiting for the hearing before the General Court, the relationship between that slip and ARES.

55 In those circumstances, it claims that the General Court was not required to draw the SRB's attention to the issue of the authentication of the decision at issue. In particular, it contends that the General Court was correct to have decided not to include, in the report for the hearing, an allegation made by Landesbank Baden-Württemberg in relation to that issue in its observations of 6 November 2019 on the SRB's replies to those measures, since that allegation was not a key part of its line of argument.

Findings of the Court

56 The right to a fair trial constitutes a fundamental principle of EU law (see, to that effect, judgments of 26 November 2013, *Groupe Gascogne* v *Commission*, C-58/12 P, EU:C:2013:770, paragraph 32, and of 26 November 2013, *Gascogne Sack Deutschland* v *Commission*, C-40/12 P, EU:C:2013:768, paragraph 28 and the case-law cited), now enshrined in Article 47 of the Charter.

57 In order to satisfy the requirements of the right to a fair trial, the EU courts must ensure that the principle of *audi alteram partem* is respected in proceedings before them and that those courts themselves respect that principle, which applies to any procedure which may result in a decision by an EU institution perceptibly affecting a person's interests (judgment of 27 March 2014, *OHIM* v *National Lottery Commission*, C-530/12 P, EU:C:2014:186, paragraph 53 and the case-law cited).

58 That principle must benefit all parties to proceedings before the EU Courts, irrespective of their legal status. EU institutions, such as the SRB, may also, therefore, avail themselves of that principle when they are parties to such proceedings (see, to that effect, judgment of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 53).

59 The principle of *audi alteram partem* does not merely confer on each party to proceedings the right to be apprised of the documents produced and observations made to the Court by the other party and to discuss them. It also implies a right for the parties to be apprised of the matters raised by those courts of their own motion, on which they intend to found their decision, and to discuss them. In order to satisfy the requirements relating to the right to a fair hearing, it is important for the parties to be apprised of, and to be able to debate and be heard on, the matters of fact and of law which will determine the outcome of the proceedings (judgment of 27 March 2014, *OHIM* v *National Lottery Commission*, C-530/12 P, EU:C:2014:186, paragraph 54 and the case-law cited).

60 In order to ensure effective compliance with the principle of *audi alteram partem*, the parties must first be invited to submit their observations on a plea which an EU Court is considering raising of its own motion in circumstances which allow them to respond appropriately and effectively to that plea including, where necessary, by producing any evidence to that court which is necessary for it to rule in full cognisance on that plea (see, to that effect, judgments of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 57, and of 27 March 2014, *OHIM* v *National Lottery Commission*, C-530/12 P, EU:C:2014:186, paragraphs 55 to 59).

61 In the present case, it is clear from paragraphs 35 and 36 of the judgment under appeal that the plea alleging failure to authenticate the decision at issue was raised by the General Court of its own motion.

62 It was therefore incumbent on the General Court to inform the parties that it was considering whether to base its decision on that plea and to invite them, as a result, to submit to it the arguments which they deemed appropriate in order for it to rule on that plea.

63 It is apparent from the wording of the measure of organisation of procedure and of the three measures of inquiry adopted by the General Court that those measures did not include questions directly related to the procedure followed by the SRB for the purposes of ensuring the authentication of the decision at issue and that they did not in any way indicate to the SRB that the General Court was considering whether to raise of its own motion a plea relating to a potential failure to authenticate that decision, including the annex thereto.

64 Although those measures were indeed intended, as Landesbank Baden-Württemberg observes, to gather information and documents relating to the procedure for the adoption of the decision at issue, the SRB cannot reasonably be expected to infer from the same measures that it was specifically requested to express its views on the circumstances in which that decision was authenticated.

65 Accordingly, since the SRB was not invited to comment on the plea alleging failure to authenticate the decision at issue in advance of the hearing held before the General Court, it is necessary to determine whether the General Court gave it the opportunity, at that hearing, to respond appropriately and effectively to that plea.

66 In that regard, it should be pointed out that, since authentication of the acts of an EU body depends on the application of specific internal procedures put in place for that purpose by that body, a plea alleging failure to authenticate the decision at issue must necessarily be assessed on the basis of the evidence submitted by the SRB as to the nature of its internal procedures and their application to the case at hand.

67 It follows that, in order to ensure observance of the principle of *audi alteram partem*, it was necessary for the SRB to be invited to submit arguments relating to that plea in circumstances enabling it to gather the evidence relating to the authentication of the decision at issue and to submit that evidence to the General Court. In the light of the circumstances set out in paragraph 64 above, the SRB could not reasonably be expected to submit such evidence at the hearing held before the General Court.

68 Moreover, it is not apparent from the judgment under appeal, from the minutes of the hearing before the General Court, or from the recording of the hearing, that the General Court clearly informed the SRB, at that hearing, that it was considering whether to raise of its own motion a plea alleging failure to authenticate the decision at issue or that it was for the SRB to address that plea at the hearing.

69 On the contrary, the General Court ruled that the SRB was not entitled, at the hearing at first instance, to submit arguments or evidence relating to the authentication of the decision at issue.

70 Although it is common ground that the SRB had not taken a position on that subject in its defence, rejoinder or observations in response to the measure of organisation of procedure and to the measures of inquiry adopted by the General Court, the General Court held, in paragraph 52 of the judgment under appeal, that an argument relating to the authentication of the decision at issue put forward by the SRB at the hearing had to be regarded as inadmissible in so far as it was new.

71 Moreover, it is apparent from the recording of the hearing before the General Court that the General Court did not respond to an offer by the SRB to submit additional evidence immediately for the purpose of proving the authentication of the decision at issue.

72 Thus, the fact that at the hearing two judges of the General Court put a number of questions to the SRB concerning the authentication of the decision at issue cannot be regarded as sufficient to satisfy the obligations incumbent on the General Court under the principle of *audi alteram partem*, set out in paragraph 60 of this judgment.

73 First, it is clear from paragraphs 52 and 53 of the judgment under appeal that the General Court considered that the requirement of authentication of the decision at issue was not satisfied on the ground that the SRB's argument relating to the presence of a document containing the annex to that decision in ARES at the time of the signature of the routing slip referred to by the SRB was inadmissible and, in the alternative, that the SRB had failed to produce evidence capable of proving the presence of that document or the inextricable link between that document and the routing slip.

74 Second, the SRB claims that, if it had been invited by the General Court to respond to a plea raised of that court's own motion alleging failure to authenticate the decision at issue, it would have produced evidence relating to the conditions for the creation of that routing slip and the content and characteristics of ARES.

75 In those circumstances, it must be held that, if the General Court had indeed afforded the SRB the opportunity to submit evidence relating to the authentication of the decision at issue, the SRB could have produced a body of evidence which was prima facie relevant in that regard. Consequently, in order to rule on that authentication, the General Court should have assessed that evidence and it could not therefore confine itself to considering that the assertions relating to the role of ARES in that authentication were inadmissible or that those assertions were unsubstantiated.

76 The fact that the SRB expressed itself on the authentication of the decision at issue during its oral submissions before the General Court, and then in response to the questions put by two judges of that court, is not, in the light of the findings made in paragraphs 66 to 71 of this judgment, capable of calling that assessment into question, particularly since the SRB does not claim to have been deprived of any opportunity to present arguments on that authentication, but maintains that it was not in a position to submit evidence in that regard at first instance.

77 Consequently, the second limb of the first ground of appeal in Case C-584/20 P and the third limb of the first ground of appeal in Case C-621/20 P must be upheld, without its being necessary to rule on the other limbs of those grounds of appeal.

78 Nevertheless, that finding is not sufficient in itself to lead to the judgment under appeal being set aside, since it is apparent from paragraphs 56, 141 and 143 of that judgment that the General Court assessed, for the sake of completeness, the first, third and sixth pleas put forward at first instance by Landesbank Baden-Württemberg and, following that assessment, upheld those pleas.

The fifth ground of appeal in Case C-584/20 P and the second ground of appeal in Case C-621/20 P

Arguments of the parties

79 By its fifth ground of appeal in Case C-584/20 P and by its second ground of appeal in Case C-621/20 P, the Commission and the SRB, supported by the Kingdom of Spain, submit, first, that the reasoning in the judgment under appeal is not only inadequate, in that the General Court upheld the complaint in full made in respect of several provisions of Delegated Regulation 2015/63 without specifying how each of them adds to the opacity of the method for calculating *ex ante* contributions to the SRF, but also contradictory, in so far as the General Court accepted that certain aspects of that method of calculation could be examined by the institutions which owe those contributions and accepted that the data at issue was confidential, without drawing the correct conclusions from those positions.

80 Second, the appellants claim that, in the case before it, the General Court disregarded the scope of the obligation to state reasons under Article 296 TFEU.

81 In the first place, they maintain that it was sufficient for the decision at issue to show clearly the methodology followed by the SRB, namely the criteria used and the reasons for their application to the institution concerned, without that institution necessarily needing to be in a position to verify precisely the accuracy of the calculation made on the basis of the financial data of other institutions.

82 The SRB points out, in that regard, that the scope of the obligation to state reasons should be limited in order to take account of the obligation to protect professional secrecy provided for in Article 339 TFEU, which is also a fundamental principle of EU law.

83 In the second place, it claims that the data relating to other institutions, which were used to calculate the total liabilities of the sector and to compare the risk profiles of the institutions concerned, are not decisive for the calculation of the *ex ante* contribution to the SRF of an individual institution. Moreover, according to the SRB, if an examination of those data were to prove necessary, it would be possible to disclose such data to the EU Courts.

84 In the third place, contrary to what the General Court held, the appellants contend that the limitation of the scope of the obligation to state reasons advocated by the Commission and the SRB is supported by the case-law of the Court of Justice.

85 They submit that the insurance-based logic which characterises the SRF may be distinguished from that of the former quasi-fiscal processes which were at issue in the cases which gave rise to the judgments of the Court of Justice referred to in paragraph 122 of the judgment under appeal.

86 Furthermore, it is – they submit – generally accepted that public authorities may take into account, for the purposes of the exercise of discretion in specific cases, confidential data to which the addressee of the decision does not have access, but which must, where appropriate, be communicated to the relevant courts. The Court has thus held, in the fields of competition law, public procurement, the civil service and anti-dumping measures, that the competent authorities may rely on undisclosed confidential data.

87 In the fourth place, the SRB claims that the method of calculation provided for in Delegated Regulation 2015/63 ensures an appropriate level of transparency in calculating *ex ante* contributions to the SRF.

88 In its view, in the exercise of its discretion, the EU legislature laid down a method designed to determine in advance the overall amount to be collected by the SRB and to allocate that amount fairly between the institutions concerned, which requires that a precise relative risk position be defined for each institution. That method must be distinguished from the 'wholly individual' approach, which normally characterises the levying of taxes.

89 The current method is broken down into seven distinct stages. Four of those stages are based on individual data relating to each institution and on common data compiled by the SRB and communicated by it, which enables each institution to recalculate not only its annual basic contribution but also its individual adjustment factor according to its risk profile and, consequently, its annual *ex ante* contribution to the SRF. Three of those steps are based on confidential data relating to other institutions and are used to compile common data used in the same way for all the institutions concerned.

90 As regards, more specifically, the risk profile of an individual institution, the input data for the calculation of common data with a view to placing each institution into a risk group are not disclosed. However, the process of placement into such a risk group is made clear in the Harmonised Annex which enables each institution to understand its relative performance for each risk indicator. The data published by the SRB on its website ensure access to additional aggregate information and there was, moreover, greater transparency in the contribution cycles following the 2017-contribution cycle.

91 Landesbank Baden-Württemberg, supported by Fédération bancaire française, contends that the reasoning of the judgment under appeal is sufficient to establish that the SRB infringed Article 296 TFEU and that the arguments put forward in the appeals are not such as to call that reasoning into question.

92 First, they maintain that it is clear from the case-law of the Court that the obligation to respect business secrets must not negate the obligation to state reasons. There is no need to strike a balance between the requirement of protection of business secrets and the obligation to state reasons, since it was open to the Commission to define another method of calculation which did not involve the use of confidential data.

93 Second, the argument that the data relating to other institutions are not decisive is, in their view, inadmissible in so far as that argument was not made at first instance and is, in any event, unfounded, since the amount of Landesbank Baden-Württemberg's 2017 *ex ante* contribution to the SRF is determined by those data.

94 Third, they contend that any analogy between the situations at issue in the present cases and those examined by the Court in fields such as competition law, public procurement, the civil service or anti-dumping measures are irrelevant. The decision at issue, which requires payment of an extremely heavy contribution, cannot be compared with the decisions which the Court of Justice reviewed in the judgments cited by the appellants.

95 Fourth, it is maintained that the General Court was correct to find that the decision at issue did not contain an adequate statement of reasons, since it did not put Landesbank Baden-Württemberg in a position to verify the amount of its 2017 *ex ante* contribution to the SRF. They add that the appellants' arguments in respect of that assessment call into question findings of fact and are therefore inadmissible.

96 Moreover, curing that defect in the course of proceedings by way of disclosing confidential data to the EU Courts is not practicable. A statement of reasons must be notified at the same time as the decision at issue. Even if the confidential data held by the SRB had been made available to the General Court, it would not have been in a position to verify that amount itself, since it does not have the computer software available to the SRB which is necessary for such verifications.

97 Fifth, as regards, more specifically, the lawfulness of the calculation method established by Delegated Regulation 2015/63, Landesbank Baden-Württemberg considers that the SRB's line of argument does not comply with the requirements of Article 169(2) of the Rules of Procedure of the Court, in so far as that line of argument does not identify the paragraphs of the judgment under appeal that it seeks to call into question.

98 In any event, it contends that the existence of a target level and a maximum proportion of that level that can be collected each year does not require a relative approach to the assessment of the risk profile, as illustrated by the calculation of the contributions to the financing of the deposit guarantee scheme established by Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149).

Findings of the Court

99 It must be borne in mind that, in paragraphs 141 and 143 of the judgment under appeal, the General Court held not only that the SRB had infringed the obligation to state reasons and the right to effective judicial protection, but also made a declaration of illegality in respect of Articles 4 to 7 and 9 of Delegated Regulation 2015/63 and of Annex I thereto. It therefore upheld the first, third and sixth pleas in law put forward by Landesbank Baden-Württemberg at first instance.

100 In the first place, it follows from paragraphs 97, 103, 109 and 110 of the judgment under appeal that the General Court held that the SRB was required, under Article 296 TFEU, to include in the statement of reasons for the decision at issue the information necessary for Landesbank Baden-Württemberg to verify the accuracy of the calculation of its 2017 *ex ante* contribution to the SRF, and that it had not fulfilled that obligation.

101 In order to assess whether the fifth ground of appeal raised in Case C-584/20 P and the second ground in Case C-621/20 P are well founded, it is necessary to determine whether the General Court thus correctly assessed the scope of the SRB's obligation to state reasons.

102 As a preliminary matter, it should be borne in mind, first, that the second paragraph of Article 296 TFEU provides that legal acts of the institutions of the Union are to state the reasons on which they are based and, second, that the right to good administration, enshrined in Article 41 of the Charter, imposes an obligation on the institutions, bodies, offices and agencies of the Union to give reasons for their decisions.

103 The statement of the reasons for the decision of an EU institution, body, office or agency is particularly important in so far as it allows persons concerned to decide in full knowledge of the circumstances whether it is worthwhile to bring an action against the decision and the court with jurisdiction to review it, and it is therefore a requirement for ensuring that the judicial review guaranteed by Article 47 of the Charter is effective (see, to that effect, judgments of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraph 40, and of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43 and the case-law cited).

104 It is also clear from the Court's case-law that the statement of reasons must be adapted to the nature of the legal act at issue and to the context in which it was adopted. In that regard, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question and, in particular, in the light of the interest which the addressees of the act may have in obtaining explanations. Consequently, the reasons given for an act adversely affecting a person are sufficient if that act was adopted in a context which was known to that person and which enables him to understand the scope of the act concerning him (see, to that effect, judgment of 28 March 2017, *Rosneft*, C-72/15, EU:C:2017:236, paragraph 122 and the case-law cited).

105 In that context, it is important, first, to point out that it cannot be inferred from the case-law of the Court that the statement of reasons for any decision of an EU institution, body, office or agency imposing the payment of a sum of money on a private operator must necessarily include all the evidence enabling the addressee to verify the accuracy of the calculation of the amount of that sum of money.

106 The Court has indeed held, as the General Court noted, in essence, in paragraph 122 of the judgment under appeal, that the reasons for an enforceable decision relating to the collection of a quasi-fiscal charge are required to comprise an exact and detailed statement of account of the elements of the claim at issue and that only an account of that kind could make possible the judicial review of such a decision (see, to that effect, judgments of 13 June 1958, *Meroni* v *High Authority*, 9/56, EU:C:1958:7, pp. 30 and 31, and of 16 December 1963, *Macchiorlati Dalmas* v *High Authority*, 1/63, EU:C:1963:58, p. 636).

107 However, the *ex ante* contributions to the SRF fixed by the decision at issue cannot, contrary to what the General Court held in paragraph 122 of the judgment under appeal, be regarded as claims akin to those at issue in the cases giving rise to the judgments of the Court of Justice cited in the previous paragraph.

108 Whereas those claims related both to a quasi-fiscal charge and to default interest, the respective amounts and methods of calculation of which could not be determined without an exact and detailed statement of account, the decision at issue merely sets out the *ex ante* contributions to the SRF of each of the institutions concerned according to rules of calculation laid down, in detail, by Delegated Regulation 2015/63.

109 Second, EU institutions, bodies, offices and agencies are, in principle, required, in accordance with the principle of the protection of business secrets, which is a general principle of EU law (see, to that effect, judgment of 14 February 2008, *Varec*, C-450/06, EU:C:2008:91, paragraph 49 and the case-law cited), to which concrete expression is given inter alia in Article 339 TFEU, not to disclose to the competitors of a private operator confidential information which that operator has provided (see, to that effect, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 109).

110 In order to ensure the fulfilment of those obligations, the Court has held, in several fields of EU law, that the statement of reasons for an act adversely affecting a subject of the law, which is premissed on a balancing of the relative position of private operators, may, to a certain extent, be limited in order to protect information relating to the operators which may be regarded as a business secret.

111 In particular, a Commission decision rejecting a complainant's allegation of State aid may, in the context of the obligation to respect business secrets, be sufficiently reasoned without including all of the figures on which the reasoning of that EU institution is based (see, to that effect, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraphs 108 to 111). Therefore, the non-confidential version of such a decision – if the EU institution discloses the reasoning it followed in a clear and unequivocal fashion and the methodology used by it, in such a way as to enable the persons concerned to ascertain those reasons and the General Court to exercise its power of review in respect of them – is sufficient to satisfy the obligation to state reasons incumbent on that EU institution (see, to that effect, judgment of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission*, C-131/15 P, EU:C:2016:989, paragraph 55).

112 Similarly, the obligation to state reasons for a decision rejecting a tender in a public procurement procedure does not mean that that unsuccessful tenderer must be provided with all the information regarding the characteristics of the tender accepted by the contracting authority (see, to that effect, judgment of 4 October 2012, *Evropaïki Dynamiki* v *Commission*, C-629/11 P, not published, EU:C:2012:617, paragraphs 21 and 22), since access to such information must be limited for the purposes of maintaining a relationship of trust between that contracting authority and the economic operators participating in that tender (see, by analogy, judgment of 14 February 2008, *Varec*, C-450/06, EU:C:2008:91, paragraph 36).

113 By reason of the specific nature of the *ex ante* contributions to the SRF, which consists, as is apparent from recitals 105 to 107 of Directive 2014/59 and from recital 41 of Regulation No 806/2014, in ensuring, according to an insurance-based logic, that the financial sector provides adequate financial resources for the SRM to be able to fulfil its functions, while encouraging the adoption, by the institutions concerned, of less risky methods of operation, the calculation of those contributions is, as noted by the Advocate General in point 143 of his Opinion, not based on the application of a rate to a basis of assessment but rather, in accordance with Articles 102 and 103 of Directive 2015/59 as well as Articles 69 and 70 of Regulation No 806/2014, on the fixing of a target level that must be met by an aggregate of all contributions collected before the end of 2023, and thereafter on an annual target level apportioned between the institutions authorised in the Member States that participate in the SRM.

114 Since the total target level is defined as required to be 1% of the amount of covered deposits of all of those institutions and the annual basic contribution of each institution is to be pro rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate

liabilities (excluding own funds) less covered deposits of all the institutions authorised in the territory of all those Member States, it becomes clear that the very principle of the method of calculating *ex ante* contributions to the SRF, as set out in Directive 2014/59 and Regulation No 806/2014, the validity of which has not been challenged by Landesbank Baden-Württemberg, means that the SRB must use data which are business secrets and cannot be included in the statement of reasons for the decision at issue.

115 In that regard, it is appropriate to reject Landesbank Baden-Württemberg's argument that there is no need to weigh the obligation to state reasons against the general principle of protection of business secrets, referred to in paragraph 109 of this judgment, because the EU legislature could have laid down an alternative method for calculating the *ex ante* contributions to the SRF without recourse to the use of confidential data.

116 The fact that the EU legislature could have opted, in advance, for an alternative method of calculation cannot have any bearing on the determination of the scope of the obligation to state reasons in relation to the principle of the protection of business secrets in connection with a method based, in part, on the use of confidential data. Since the EU legislature chose such a method, that choice necessarily quite legitimately requires the obligation to state reasons to be weighed against the principle of the protection of business secrecy.

117 It is clear from settled case-law of the Court that the EU legislature has a broad discretion when it is asked to intervene in an area which entails political, economic and social choices on its part, and in which it is called upon to undertake complex assessments (judgment of 17 October 2013, *Billerud Karlsborg and Billerud Skärblacka*, C-203/12, EU:C:2013:664, paragraph 35 and the case-law cited).

118 To take the view, as the General Court did, that the statement of reasons for the decision at issue must necessarily enable Landesbank Baden-Württemberg to verify the accuracy of the calculation of its 2017 *ex ante* contribution to the SRF would necessarily mean precluding the EU legislature from establishing a method of calculating that contribution which incorporated data the confidentiality of which is protected by EU law and, therefore, reducing unduly the broad discretion which a legislature must have for that purpose by preventing it, inter alia, from opting for a method capable of ensuring dynamic adjustment of the financing of the SRF according to developments in the financial sector, by taking into account, in particular, the relative financial situation of each institution authorised in one of the Member States participating in the SRF.

119 It should also be pointed out that the deposit guarantee scheme established by Directive 2014/49, to which Landesbank Baden-Württemberg refers in order to establish that it is possible to conceive of an alternative method of calculating *ex ante* contributions to the SRF, is also based, as the Advocate General stated in point 160 of his Opinion, on contributions calculated using data that are business secrets of the institutions concerned.

120 Third, although it follows from the foregoing that the SRB's obligation to state reasons must be weighed, on the basis of the logic of the system of financing the SRF and of the method of calculation laid down by the EU legislature, against the SRB's obligation to respect the confidentiality of business secrets of the financial institutions concerned, the fact remains that the obligation to respect business secrets cannot be given so wide an interpretation that the obligation to provide a statement of reasons is thereby deprived of its essence (see, to that effect, judgment of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission*, C-131/15 P, EU:C:2016:989, paragraph 48 and the case-law cited).

121 However, it cannot be held, when weighing the obligation to state reasons against the principle of the protection of business secrets, that giving reasons for a decision requiring a private operator to pay a sum of money without providing it with all the information needed to verify the exact calculation of the amount of that sum of money necessarily undermines, in every case, the substance of the obligation to state reasons.

122 In the present case, the obligation to state reasons must be regarded as fulfilled where the persons concerned by a decision fixing *ex ante* contributions to the SRF, while not being sent data which are business secrets, have the method of calculation used by the SRB and sufficient information to understand, in essence, how their individual situation was taken into account, for the purposes of calculating their *ex ante* contribution to the SRF, relative to the situation of all the other financial institutions concerned.

123 In such a case, the persons concerned are in a position to verify whether their *ex ante* contribution to the SRF was fixed arbitrarily, in disregard of the reality of their economic situation or through the use of data relating to the rest of the financial sector which are not plausible. Those persons concerned can therefore understand the reasons for the decision calculating their *ex ante* contribution to the SRF and assess whether it is worthwhile to bring an action against that decision, so that it would be excessive to require the SRB to disclose each of the figures on which the calculation of the contribution of each institution concerned (see, by analogy, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 108 and the case-law cited).

124 Consequently, the General Court erred in law in considering, in paragraphs 97, 103 and 109 of the judgment under appeal, that the SRB was obliged, under Article 296 TFEU, to include in the statement of reasons for the decision at issue the figures necessary for Landesbank Baden-Württemberg to verify the accuracy of the calculation of its 2017 *ex ante* contribution to the SRF, irrespective of whether such an obligation could be precluded by the confidentiality of some of those figures.

125 The General Court was therefore not entitled to interpret the obligation to state reasons so extensively as to hold, in paragraph 110 of the judgment under appeal, that the SRB had infringed that obligation.

126 In the second place, in paragraphs 129 to 140 of the judgment under appeal, the General Court examined the plea of illegality raised by Landesbank Baden-Württemberg in its sixth plea at first instance in respect of several provisions of Delegated Regulation 2015/63 and Annex I thereto and, in paragraph 141 of that judgment, it subsequently upheld that plea.

127 The General Court thus found that the method of calculation defined by the Commission, in Articles 4 to 7 and 9 of Delegated Regulation 2015/63 and in Annex I thereto, was opaque, at least as regards the adjustment of the *ex ante* contributions to the SRF on the basis of the risk profile of the institutions concerned, and that such opacity prevented the SRB from complying with its obligation to state reasons under Article 296 TFEU.

128 In that regard, it should be noted, first, that the precise method of calculation used by the SRB to determine the amount of *ex ante* contributions to the SRF is defined by Delegated Regulation 2015/63. In particular, Annex I to that delegated regulation sets out the various stages of that calculation method and sets out the mathematical formulae to be applied by the SRB.

129 Delegated Regulation 2015/63 is thus an integral part of the context of the decision at issue, which must, in accordance with the case-law referred to in paragraph 104 of this judgment, be taken into account for the purpose of assessing the statement of reasons for that decision, in so far as it ensures that the persons concerned by that decision are fully informed of the method of calculation used by the SRB.

130 Second, as regards, more specifically, the adjustment of the *ex ante* contributions to the SRF according to risk profile, as required by Article 103(2) and (7) of Directive 2014/59 and by Article 70(2) of Regulation No 806/2014, the principles to be applied in that regard by the SRB are set out in Articles 6 to 9 of Delegated Regulation 2015/63 and implemented, in greater detail, in Annex I to that delegated regulation.

131 Such adjustment of the *ex ante* contribution to the SRF to reflect a financial institution's risk profile is based on a comparison of that institution's exposure to the relevant risk factors with that of the other institutions concerned.

132 It follows from Step 2 to Step 4 of the method for calculating *ex ante* contributions to the SRF, set out in Annex I to that delegated regulation, that that adjustment is carried out essentially, first, by allocating, for most risk factors, each of the institutions concerned to a 'bin', bringing together a series of institutions regarded as similar on the basis of the values for the raw indicator relating to each risk factor, and the allocation to institutions forming part of the same 'bin' of a common value for a rescaled indicator.

133 The values thus allocated, for a given institution, for each risk indicator are then consolidated, in Stage 5 of the calculation of the *ex ante* contributions to the SRF provided for in Annex I to Delegated Regulation 2015/63, into a composite indicator taking account of the weighting of the various risk pillars.

134 The risk adjusting multiplier is then determined, in Stage 6 of that calculation, according to a rescaling of the composite indicator ranging between 0.8 to 1.5.

135 It follows that the SRB is undoubtedly not able to provide an institution with data enabling it to verify fully the accuracy of the value of the risk adjusting multiplier attributed to it for the purposes of calculating its *ex ante* contribution to the SRF, since that verification would require data which are business secrets relating to the economic situation of each of the other institutions concerned.

136 However, it should be noted that the first subparagraph of Article 88(1) of Regulation No 806/2014 provides for the possibility of disclosing confidential data obtained by the SRB in the context of its activity, where the disclosure of that data may be made in summary or collective form such that entities concerned cannot be identified.

137 Therefore, within the framework defined by Delegated Regulation 2015/63, the SRB may, without infringing its obligation to respect business secrets, disclose the limit values of each 'bin' and the related indicators, in order to enable the financial institution concerned to satisfy itself, inter alia, that the profile attributed to it during the discretisation of the indicators, as defined in Annex I to that delegated regulation, in fact corresponds to its economic situation, that that discretisation was calculated consistently with the methodology set out in the delegated regulation on the basis of plausible data and that all the risk factors that must be taken into account pursuant to Regulation No 806/2014 and to that delegated regulation were indeed taken into account.

138 Third, it must be stated that the other stages of the methodology for calculating *ex ante* contributions to the SRF are based, as the Advocate General stated in point 149 of his Opinion, on aggregate data from the institutions concerned, which may be disclosed in collective form without infringing the SRB's obligation to respect business secrets.

139 In the light of all those factors, it is clear that Delegated Regulation 2015/63 does not prevent the SRB from disclosing, in collective and anonymised form, sufficient information to enable an institution to understand how its individual situation was taken into account in the calculation of its *ex ante* contribution to the SRF relative to the situation of all the other institutions concerned.

140 It must also be added that, although a statement of reasons based on the disclosure of relevant information in such a form does not enable every institution to detect systematically any error made by the SRB in the collection and aggregation of the data at issue, it is nonetheless sufficient to enable that institution to satisfy itself that the information which it provided to the competent authorities was indeed included in the calculation of its *ex ante* contribution to the SRF, in accordance with the relevant rules of EU law, to identify, on the basis of its general knowledge of the financial sector, any use of implausible or manifestly incorrect information, and to determine whether it is worthwhile to bring an action for the annulment of a decision of the SRB fixing its *ex ante* contribution to the SRF.

141 It follows that Delegated Regulation 2015/63 does not prevent the SRB from complying with its obligation to state reasons, as set out in paragraph 122 above, and that that delegated regulation enables it to provide the institutions concerned with sufficient information to understand the reasons justifying the decisions fixing the *ex ante* contributions to the SRF and to assess whether an action would need to be brought against those decisions.

142 The General Court therefore erred in law in its assessment, in paragraph 141 of the judgment under appeal, in which it found that Articles 4 to 7 and 9 of, and Annex I to, Delegated Regulation 2015/63 were illegal to the extent that the finding of infringement of the obligation to state reasons made in paragraph 110 of that judgment stemmed from those provisions.

143 In the third place, it follows from paragraphs 127 and 143 of the judgment under appeal that the General Court considered that the SRB had infringed the right to effective judicial protection by not providing Landesbank Baden-Württemberg, in the statement of reasons for the decision at issue, with information enabling it to verify the accuracy of the calculation of its 2017 *ex ante* contribution to the SRF, and that the possibility for the General Court to request the SRB to adduce information could not guarantee compliance with that right.

144 However, although compliance by the SRB with its obligation to state reasons is necessary in order to guarantee the judicial protection of the addressees of its decisions, it is apparent from the foregoing that the General Court's assessment that the SRB, in the present case, infringed that obligation was premissed on a misconception of that obligation constituting an error of law.

145 In addition, it follows from the Court of Justice's case-law that, where the statement of reasons for a decision has had to be limited in order to ensure the protection of confidential data taken into account by the decision-maker, it is for that decision-maker, in the event of submissions before the EU Courts calling that data into question, to establish its case before them in the course of their investigation (see, to that effect, judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 110).

146 Where appropriate, in order to carry out an effective judicial review, in accordance with the requirements of Article 47 of the Charter, the EU Courts may thus request that the SRB produce data capable of justifying calculations the accuracy of which has been challenged before them, by ensuring, where necessary, the confidentiality of those data (see, by analogy, judgment of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraphs 120 and 125).

147 The second subparagraph of Article 88(1) of Regulation No 806/2014 also refers to the possibility for the SRB to disclose information subject to the requirements of professional secrecy where such disclosure is due for the purpose of legal proceedings.

148 It follows from the foregoing that the General Court erred in law in its reasoning in holding, in paragraph 143 of the judgment under appeal, that the decision at issue had to be annulled for infringement of the obligation to state reasons and of the right to effective judicial protection, thereby upholding the first, third and sixth pleas put forward by Landesbank Baden-Württemberg at first instance.

149 Since the fifth ground of appeal relied on in Case C-584/20 P and the second ground of appeal relied on in Case C-621/20 P are well founded, the judgment under appeal must be set aside, without there being any need to examine the second to fourth grounds of appeal relied on in Case C-584/20 P.

The action before the General Court

150 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, where it sets aside the decision of the General Court, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

151 That is the case in the present case, since the Court has all the elements necessary to rule on the action.

Authentication of the decision at issue

152 It is clear, in essence, from the case-law of the Court on the authentication of acts of the Commission that authentication is intended to guarantee legal certainty by ensuring that the text adopted by the college of Commissioners becomes fixed, as a result of which, in the event of a dispute, it can be verified that the texts notified or published correspond precisely to the text adopted by the college. Such authentication constitutes an essential procedural requirement breach of which may give rise to annulment of the relevant act and may be raised by the Court of its own motion (see, to that effect, judgments of 15 June 1994, *Commission* v *BASF and Others*, C-137/92 P, EU:C:1994:247, paragraphs 75 and 76, and of 6 April 2000, *Commission* v *ICI*, C-286/95 P, EU:C:2000:188, paragraphs 40, 41 and 51).

153 In the present case, it is common ground that the decision at issue is comprised, on the one hand, of the main body of that decision and, on the other, of an annex.

154 It is apparent from the evidence submitted by the SRB before the General Court that the procedure established within that body to ensure the authentication of such a decision was based on the handwritten signature of the body of the decision and a routing slip.

155 The authentication of the body of the decision at issue is sufficiently ensured by the handwritten signature affixed to it by the Chair of the SRB.

156 As regards the annex to the decision at issue, the SRB produced, before the General Court, a routing slip, which the Chair of the SRB had signed by hand, referring expressly to two attached items and containing an identification number.

157 In addition, the SRB produced, before the Court, a screenshot relating to the content of ARES.

158 It is clear, first of all, from the screenshot that the number on the routing slip referred to in paragraph 156 of this judgment is the 'Save number' denoting, in ARES, the file corresponding to the decision at issue.

159 That screenshot then makes it possible to identify the two enclosed items mentioned in that routing slip as being, first, the body of the decision at issue and, second, the annex to it.

160 Last, it follows from the same screenshot that the file corresponding to the decision at issue in ARES was created and sent on 11 April 2017, that is to say, the day on which the decision at issue was adopted.

161 In the light of those factors, the SRB's claim that ARES contained, at that date, a file corresponding to the annex to the decision at issue, to which the routing slip referred, must be regarded as having been proven.

162 That assessment is not called into question by the fact that the screenshot produced by the SRB also indicates a registration number ('Reg. number'), different from the Save number, and a date registered in the file, namely 13 June 2017, which refer, according to the uncontested explanations provided by the SRB, to the closure of the file at issue.

163 In those circumstances, the Chair of the SRB's handwritten signature of the routing slip is sufficient to ensure authentication of the annex to the decision at issue.

The first plea, alleging infringement of the obligation to state reasons

164 By its first plea at first instance, Landesbank Baden-Württemberg submits that the decision at issue is not sufficiently reasoned, in that it does not contain a range of relevant information, in particular as regards the adjustment of its 2017 *ex ante* contribution to the SRF according to its risk profile.

165 It follows from paragraph 122 of this judgment that the statement of reasons for the decision at issue must ensure, taking into account the context of that decision, that sufficient information is disclosed to Landesbank Baden-Württemberg for it to understand how its individual situation was taken into account in calculating its 2017 *ex ante* contribution to the SRF, relative to the situation of all the other financial institutions concerned.

166 To that end, it is for the SRB, as has been found in paragraph 139 of this judgment, to publish or disclose to Landesbank Baden-Württemberg, in collective and anonymised form, the information relating to the institutions concerned which was used to calculate that contribution, in so far as that information may be communicated without compromising business secrets.

167 The information which must thus be made available to Landesbank Baden-Württemberg in order for it to have an adequate statement of reasons for the decision at issue includes, in particular, the limit values of each 'bin' and those of the relevant indicators, on the basis of which Landesbank Baden-Württemberg's 2017 *ex ante* contribution to the SRF was adjusted to its risk profile.

168 It is common ground that the information in the decision at issue, the Harmonised Annex and available on the SRB's website at the date of the decision at issue covered only part of the relevant information that the SRB could have provided without compromising business secrets.

169 In particular, the Harmonised Annex did not contain data on the limit values of each 'bin' and the values of the corresponding indicators.

170 The SRB also stated before the Court that it had also not published such information on its website at the time of the date of the decision at issue.

171 It follows that the decision at issue does not contain an adequate statement of reasons and that the first plea put forward by Landesbank Baden-Württemberg at first instance is well founded.

172 Consequently, without its being necessary to examine the other pleas raised at first instance, the decision at issue must be annulled in so far as it concerns Landesbank Baden-Württemberg.

Continued effects of the decision at issue

173 The SRB asked the General Court to defer the effect of any annulment of the decision at issue for a period of six months following the date on which its judgment became final.

174 Under the second paragraph of Article 264 TFEU, the Court of Justice may, if it considers this necessary, state which of the effects of the act which it has declared void are to be considered as definitive.

175 The Court has held in that regard that, on grounds of legal certainty, the effects of such an act may be maintained, in particular where the immediate effects of its annulment would give rise to serious negative consequences for the persons concerned and where the lawfulness of the act in question is contested, not because of its aim or content, but on grounds of lack of competence or infringement of an essential procedural requirement (judgment of 7 September 2016, *Germany* v *Parliament and Council*, C-113/14, EU:C:2016:635, paragraph 81 and the case-law cited).

176 In the present case, although the decision at issue was taken in infringement of essential procedural requirements, the Court has, however, not found, in the present proceedings, any error affecting the conformity of that act with the rules governing the calculation of the *ex ante* contributions to the SRF established by Directive 2014/59, Regulation No 806/2014 and Delegated Regulation 2015/63.

177 That being so, to annul the decision at issue without providing for its effects to be maintained until it is replaced by a new act could undermine the implementation of Directive 2014/59, Regulation No 806/2014 and Delegated Regulation 2015/63, which form an integral part of the banking union, thereby contributing to the stability of the euro area.

178 In those circumstances, the Court considers it appropriate to maintain the effects of the decision at issue, in so far as it concerns Landesbank Baden-Württemberg, until the entry into force, within a reasonable period which cannot exceed six months from the date of delivery of this judgment, of a new decision of the SRB fixing the 2017 *ex ante* contribution to the SRF of that financial institution.

Costs

179 In accordance with Article 184(2) of the Rules of Procedure of the Court, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs.

180 Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 138(3) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, provides, in addition, that, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

181 In the present case, given that the judgment under appeal has been set aside and the action at first instance upheld, it is appropriate that the Commission, the SRB and Landesbank Baden-Württemberg be ordered to bear their own costs relating to the appeal and furthermore order the SRB to bear its own costs relating to the proceedings at first instance and to pay those incurred by Landesbank Baden-Württemberg relating to those proceedings at first instance.

182 Under Article 140(1) of the Rules of Procedure of the Court, applicable to appeal proceedings by virtue of Article 184(1) thereof, Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of Spain is to bear its own costs relating to the appeal and the Commission, as intervener before the General Court, is to bear its own costs relating to the proceedings at first instance.

183 In accordance with Article 140(3) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) of those rules, the Court may order an intervener other than those referred to in Article 140(1) and (2) thereof to bear his own costs. In the present case, the Court orders Fédération bancaire française to bear its own costs relating to the appeal.

On those grounds, the Court (Grand Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 23 September 2020, *Landesbank Baden-Württemberg* v *SRB* (T-411/17, EU:T:2020:435);**

2. **Annuls the decision of the Executive Session of the Single Resolution Board of 11 April 2017 on the calculation of the 2017 *ex ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05), in so far as it concerns Landesbank Baden-Württemberg;**

3. Maintains the effects of the decision of the Executive Session of the Single Resolution Board of 11 April 2017 on the calculation of the 2017 *ex ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05), in so far as it concerns Landesbank Baden-Württemberg, until the entry into force, within a reasonable period which cannot exceed six months from the date of delivery of this judgment, of a new decision of the Single Resolution Board fixing the 2017 *ex ante* contribution to the Single Resolution Fund of that institution;

4. Orders the European Commission to bear its own costs, both at first instance and on appeal;

5. Orders the Single Resolution Board to bear its own costs, both at first instance and on appeal, and to pay the costs incurred by Landesbank Baden-Württemberg at first instance;

6. Orders Landesbank Baden-Württemberg, Fédération bancaire française and the Kingdom of Spain each to bear their own costs relating to the appeal proceedings.

[Signatures]