

**Action brought on 16 May 2023 — WT v Commission****(Case T-282/23)**

(2023/C 271/45)

*Language of the case: Italian***Parties***Applicant:* WT (represented by: M. Velardo, lawyer)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- annul the decision rejecting the application for transfer of pension rights under Article 11(2) and (3) of Annex VIII to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union issued by the Office for the Administration and Payment of Individual Entitlements PMO/2 — Pensions on 4 August 2022 with reference 'PMO 2, TFT IN, 2833610500, Pers. Nr: 336105';
- annul the decision of the AECC (Authority empowered to conclude contracts of employment) of 13 February 2023, notified the same day, with which the appeal (No R/496/22) brought pursuant to Article 90(2) of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union against the decision of 4 August 2022 was dismissed;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Article 11(2) of Annex VIII of the Staff Regulations of Officials of the European Union in so far as the six-month time limit is provided for exclusively by implementing provisions and is not imposed by any provision in the Staff regulations. The applicant also raises a plea of illegality under Article 277 TFEU regarding the general implementing provisions inasmuch as they infringe higher-ranking legal provisions.
2. Second plea in law, alleging an error of law in the interpretation of the concept of force majeure and of the financial provisions as well as a failure to observe the duty of care and the principle of proportionality. It cannot be denied that the Covid pandemic was both an anomalous and unpredictable event that had exogenous and disruptive effects on the management and planning of individuals' daily activities including, in the case of the applicant, making an application for transfer of pension rights, which was done after the six-month time limit. Indeed it should be noted that in the present case both the objective and subjective elements which allow for force majeure to be invoked are present.

---

**Action brought on 24 May 2023 — Sber v SRB****(Case T-290/23)**

(2023/C 271/46)

*Language of the case: English***Parties***Applicant:* Sber Vermögensverwaltungs AG (Vienna, Austria) (represented by: O. Behrends, lawyer)*Defendant:* Single Resolution Board (SRB)**Form of order sought**

The applicant claims that the Court should:

- annul, first, the SRB's decision of 28 July 2022 with respect to the applicant's request for access to documents;

- annul, second, the decision of 8 March 2023 of the SRB's Appeal Panel in case 4/2022, to the extent that this decision contains adverse findings for the applicant;
- annul, third, the negative reply, pursuant to Article 8(3) of Regulation (EC) 1049/2001, <sup>(1)</sup> fifteen working days after the Appeal Panel Decision;
- order the defendant to bear the applicant's costs.

### **Pleas in law and main arguments**

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

1. First plea in law, alleging that the SRB's decision dated 28 July 2022 with respect to the applicant's request for access to documents ('the original decision') is illegal.
  - The illegality of the original decision has been determined by the Appeal Panel decision in a manner that is binding for the SRB. It is also illegal because of the further grounds set out below.
2. Second plea in law, alleging that the Appeal Panel Decision is illegal for the following reasons.
  - The Appeal Panel exceeds its competence and violates Article 85(8) of Regulation (EU) 806/2014 <sup>(2)</sup> because it purports to be able to uphold parts of the SRB's original decision in a binding and final manner despite its decision to remit the case to the SRB;
  - The Appeal Panel erroneously failed to grant access to the file and disclosure of documents by means of a procedural order because of its erroneous view that such steps would circumvent the rules on public access;
  - The SRB Appeal Panel errs by not excluding categorically any reliance on Article 4(1)(a), fourth indent, of Regulation (EC) 1049/2001.
  - The SRB Appeal Panel errs by not excluding categorically any reliance on the exception under Article 4(2) of Regulation (EC) 1049/2001.
3. Third plea in law, alleging the illegality of the implied negative reply.
  - The SRB failed to comply with its obligation to take a decision within the time limit prescribed in Article 8(1) of Regulation (EC) 1049/2001. This constitutes a denial of access pursuant to Article 8(3) of Regulation (EC) 1049/2001. The denial is illegal because of the binding nature of the SRB's Appeal Panel Decision. It is illegal, moreover, because of the failure to provide any reasoning.

The applicant also submits pleas of illegality with respect to Articles 20 and 21(4) of the Rules of Procedure of the Appeal Panel and Articles 85(8) and 86(1) of Regulation (EU) No 806/2014, as interpreted by the SRB.

<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

<sup>(2)</sup> 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).