

Form of order sought

The applicant claims that the Court should:

- primarily, annul the contested decision of the Board of Appeal of EUIPO in accordance with and for the purposes of Article 51(1)(b) EUTMR;
- in the alternative, annul the contested decision of the Board of Appeal of EUIPO in accordance with and for the purposes of Article 51(1)(c) EUTMR;
- in any event, order that the applicant should be reimbursed in full for the costs of the proceedings, or at least that each party should bear its own costs in full.

Plea in law

- Infringement of Article 51(1)(b) and (c) of Regulation No 207/2009.

Action brought on 10 July 2017 — Portigon v SRB

(Case T-420/17)

(2017/C 277/81)

Language of the case: German

Parties

Applicant: Portigon AG (Düsseldorf, Germany) (represented by: D. Bliesener and V. Jungkind, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision of 11 April 2017 concerning the calculation of the ex-ante contributions to the Single Resolution Fund for 2017 (SRB/ES/SRF/2017/05) in so far as the decision concerns the applicant; and
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the first to third subparagraphs of Article 70(2) of Regulation (EU) No 806/2014⁽¹⁾ in conjunction with Article 8(1)(b) of Implementing Regulation (EU) 2015/81⁽²⁾ in conjunction with Article 103(7) of Directive 2014/59/EU⁽³⁾
 - The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution to the Fund, since a mandatory contribution for institutions under resolution is not provided for under Regulation (EU) No 806/2014 and Directive 2014/59/EU. Article 114 TFEU prohibits levying contributions on institutions, such as the applicant, which are resolving their remaining business operations. The requirements for the adoption of measures under Article 114(1) TFEU are, in relation to the applicant, not satisfied. Furthermore, the levying of contributions is contrary to Article 114(2) TFEU.
 - The applicant claims that the defendant was wrong to make the applicant subject to an obligation to pay a contribution to the Fund; since the institution has no risk exposure, there is no prospect of the institution entering into resolution in accordance with the rules of Regulation (EU) No 806/2014 and the institution is of no importance to the stability of the financial system. Such an obligation would infringe Article 103(7)(a), (d) and (g) of Directive 2014/59/EU.
 - The applicant has not engaged in any new business since the beginning of 2012 and is under resolution as a result of an aid decision by the European Commission. It holds the majority of its remaining liabilities on trust for another entity, which has taken over the opportunities and risks from that business.

- Delegated Regulation (EU) 2015/63⁽⁴⁾ infringes Article 114 TFEU and Article 103(7) of Directive 2014/59/EU as an essential element relating to the calculation of the contribution (second sentence of Article 290(1) TFEU). Furthermore, the defendant should not have been allowed to transfer additional risk indicators (Article 290(1) TFEU).
2. Second plea in law, alleging infringement of Article 16 and Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter'), since, in view of the special situation of the applicant in comparison with other credit institutions liable to pay contributions, the decision is contrary to the general principle of equality. Furthermore, the decision interferes disproportionately with the applicant's freedom to conduct a business
 3. Third plea in law, alleging, in the alternative, infringement of Article 70(2) of Regulation (EU) No 806/2014, in conjunction with Article 103(7) of Directive 2014/59/EU, since the defendant, in calculating the amount of the contribution, wrongly failed to exclude the applicant's risk-free on-balance sheet fiduciary business from the liabilities relevant to collection of the contribution
 4. Fourth plea in law, alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014, in conjunction with Article 5(3) and (4) of Delegated Regulation (EU) 2015/63, since the defendant wrongly calculated the applicant's contribution on the basis of a gross approach with regard to derivative contracts
 5. Fifth plea in law, alleging, in the alternative, infringement of Article 70(6) of Regulation (EU) No 806/2014, in conjunction with Article 6(8)(a) of Delegated Regulation (EU) 2015/63, since the defendant, in calculating the amount of the contribution, wrongly regarded the applicant as an institution undergoing reorganisation and the risk indicator under Article 6(5)(c) of Delegated Regulation (EU) 2015/63 should have taken the minimum value
 6. Sixth plea in law, alleging infringement of Article 41(1) and (2)(a) of the Charter due to the absence of an opportunity for the applicant to be heard
 7. Seventh plea in law, alleging infringement of Article 41(1) and (2)(c) of the Charter due to the fact that the decision fails to state adequate reasons

⁽¹⁾ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

⁽²⁾ Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

⁽³⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

⁽⁴⁾ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

Action brought on 3 July 2017 — Capo d'Anzio v Commission

(Case T-425/17)

(2017/C 277/82)

Language of the case: Italian

Parties

Applicant: Capo d'Anzio SpA (Anzio, Italy) (represented by: S. Carloni, lawyer)

Defendant: European Commission