

Appeal brought on 6 November 2020 by the European Commission against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 23 September 2020 in Case T-411/17, *Landesbank Baden-Württemberg v Single Resolution Board*

(Case C-584/20 P)

(2020/C 423/47)

Language of the case: German

Parties

Appellant: European Commission (represented by: D. Triantafyllou, A. Nijenhuis, A. Steiblytė, V. Di Bucci, acting as Agents)

Other parties to the proceedings: Landesbank Baden-Württemberg, Single Resolution Board

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court;
- order the respondent to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits that the judgment under appeal by which the General Court annulled the decision of the Executive Session of the Single Resolution Board (SRB) 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 (decision at issue) should be set aside for the following reasons:

First, the characterisation of the annex to the decision at issue is defective, in so far as the General Court takes the view that that annex is ‘in no way inextricably linked’ to that decision. This constitutes, according to the appellant, a distortion of the facts. Moreover, the appellant alleges that the General Court infringed the rule that the parties should be heard and the rights of the defence of the Single Resolution Board. The appellant contends that the annex to the decision at issue constitutes an integral part of the decision. That annex was electronically submitted to the members of the executive session of the SRB together with the text of the decision and was approved by it. The routing slip relating to the handwritten signature of the decision lists that annex under the same code. The appellant further alleges that the General Court failed to have regard to this and did not give the Single Resolution Board the opportunity to prove the connection between the two documents, despite the fact that it concerned a legal defect raised by the General Court of its own motion.

Second, the General Court erred in law and failed to state reasons when it declared the plea of illegality raised at first instance in respect of Delegated Regulation (EU) 2015/63⁽¹⁾ admissible. The appellant contends that the General Court disregarded the fact that the alleged illegality of the delegated regulation stems from Regulation (EU) No 806/2014⁽²⁾ and from Directive 2014/59.⁽³⁾ Since the legality of the latter two legal measures was not in dispute, the General Court should not have reviewed any infringement of the delegated regulation, which is ultimately based on those two higher-ranking legal measures. According to the appellant, the General Court also failed to explain to what extent the illegality of the delegated regulation that was established is based on the higher-ranking law.

Third, the General Court misinterpreted Article 69(1) and Article 70(2) of Regulation No 806/2014 in respect of the target level and the basic annual contribution. The General Court considers that the target level and the basic annual contribution may be exceeded or not be met. However, the appellant contends that, in so doing, it disregards the fact that an agency such as the Single Resolution Board has no power to determine such amounts. The fixed reference amount necessarily entails a proportionate distribution of the burden among all persons who owe contributions.

Fourth, the General Court erred in law in regarding the delegated regulation, in particular, Articles 4 to 7 and Article 9 thereof, as well as Annex I thereto, as ‘interdependent’, wrongly characterising the adjustment of contributions to the risk profile. The appellant further alleges that the General Court bases its argument as to the ‘interdependence’ of contributions on the adjustment of the individual contributions to the risk profile of institutions which owe those contributions. According to the appellant, this adjustment, however, is the result of the comparison of individual institutions with their competitors, which should not be confused with ‘interdependence’.

Fifth, the appellant alleges that the General Court erred in law by interpreting the European Commission's obligation to state reasons in accordance with Article 296 TFEU in an overly extensive manner. Generally criticising several combined provisions of the delegated regulation, the General Court criticised the method of calculating contributions as opaque, despite recognising the confidential nature of competing institutions' data. According to the appellant, however, it should suffice that the method used, its purpose and scope are explained in the respective decision, with the result that persons who owe contributions can relate it to the relevant data which concern them. The appellant further alleges that the data of its numerous competitors are not relevant in that respect. According to the case-law, there are several examples where the confidential nature of competitors' data was protected without the regulations concerned being rejected. Finally, the General Court failed to apply its procedural rules concerning access to confidential information.

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- (¹) European 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).
- (²) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).
- (³) 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).

**Order of the President of the Court of 5 October 2020 (request for a preliminary ruling from the
Verwaltungsgericht Köln — Germany) — Interseroh Dienstleistungs GmbH v Land
Nordrhein-Westfalen**

(Case C-353/19) (¹)

(2020/C 423/48)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

(¹) OJ C 255, 29.7.2019.