Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber, Extended Composition)

20 December 2023 *

(Economic and monetary union – Banking union – Single Resolution Mechanism for credit institutions and certain investment firms (SRM) – Single Resolution Fund (SRF) – Decision of the SRB on the calculation of the 2021 *ex ante* contributions – Duty to state reasons – Effective judicial protection – Equal treatment – Principle of proportionality – SRB's discretion – Plea of illegality – Commission's discretion – Limitation of the temporal effects of the judgment)

In Case T-389/21,

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

applicant,

v

Single Resolution Board (SRB), represented by J. Kerlin, T. Wittenberg and D. Ceran, acting as Agents, and H.-G. Kamann, F. Louis, P. Gey and L. Hesse, lawyers,

defendant,

supported by

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

intervener,

THE GENERAL COURT (Eighth Chamber, Extended Composition),

composed of A. Kornezov, President, G. De Baere, D. Petrlík (Rapporteur), K. Kecsmár and S. Kingston, Judges,

Registrar: S. Jund, Administrator,

having regard to the written part of the procedure,

further to the hearing on 7 March 2023,

* Language of the case: German.

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, Landesbank Baden-Württemberg, seeks the annulment of Decision SRB/ES/2021/22 of the Single Resolution Board (SRB) of 14 April 2021 on the calculation of the 2021 *ex ante* contributions to the Single Resolution Fund ('the contested decision'), in so far as that decision concerns it.

I. Background to the dispute

2 The applicant is a credit institution governed by public law established in Germany. It is a member of the institutional protection scheme ('the IPS') of the Sparkassen-Finanzgruppe (Savings Banks Finance Group, Germany).

3 By the contested decision, the SRB set, pursuant to Article 70(2) 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), the *ex ante* contributions to the Single Resolution Fund (SRF) ('the *ex ante* contributions') for 2021 ('the 2021 contribution period') of the institutions covered by Article 2 together with Article 67(4) of that regulation ('the institutions'), including the applicant.

4 By assessment notice of 21 April 2021, the Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Agency for Financial Services Supervision, Germany; 'the BaFin'), in its capacity as the national resolution authority ('the NRA'), within the meaning of Article 3(1)(3) of Regulation No 806/2014, ordered the applicant to pay its *ex ante* contribution for the 2021 contribution period, as set by the SRB.

II. Contested decision

5 The contested decision consists of the body of that decision, together with three annexes.

6 The body of the contested decision sets out the process for determining the *ex ante* contributions for the 2021 contribution period; that process applies to all of the institutions.

7 Specifically, in Section 5 of that decision, the SRB set the annual target level, to which reference is made in Article 4 of Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation No 806/2014 with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1) for the 2021 contribution period ('the annual target level').

8 The SRB explained that it had set that annual target level at 1/8th of 1.35% of the average amount of covered deposits, calculated quarterly, of all of the institutions in 2020 ('the average amount of covered deposits in 2020'), as that amount had been obtained from the data communicated by the deposit guarantee schemes pursuant to Article 16 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).

9 In Section 6 of the contested decision, the SRB described the method to be used to calculate the *ex ante* contributions for the 2021 contribution period. In that regard, it stated, in recital 59 of that decision, that, for that period, 13.33% of the *ex ante* contributions had been calculated on the 'national base', that is to say, on the basis of the data communicated by institutions authorised in the territory of the participating Member State concerned ('the national base'), in accordance with Article 103 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) and Article 4 of Delegated Regulation 2015/63. The remainder of the *ex ante* contributions (86.67%) were calculated on the 'Banking Union base', that is to say, on the basis of the data communicated by all of the institutions authorised in the territories of all of the Member States participating in the Single Resolution Mechanism (SRM) ('the union base' and 'the participating Member States') in accordance with Articles 69 and 70 of Regulation No 806/2014 and Article 4 of Implementing Regulation 2015/81.

10 In that same Section 6 of the contested decision, the SRB also explained that there were, in essence, two categories of institutions subject to *ex ante* contributions. The first category comprises institutions required to pay a lump-sum contribution in the light of their specific characteristics, such as their size or the nature of their activities. The calculation of the *ex ante* contribution of those institutions is governed by Articles 10 and 11 of Delegated Regulation 2015/63.

11 The institutions falling within the second category are required to pay an *ex ante* contribution adjusted to their risk profile, which the SRB set in accordance with the following main stages.

12 In the first stage, the SRB calculated, in accordance with point (a) of the second subparagraph of Article 70(2) of Regulation No 806/2014, the basic annual contribution of each institution, which is pro-rata based on the amount of the liabilities of the institution concerned excluding own funds and covered deposits ('net liabilities'), with respect to the net liabilities of all of the institutions authorised in the territories of all of the participating Member States. Pursuant to Article 5(1) of Delegated Regulation 2015/63, the SRB deducted certain types of liabilities from the net liabilities of the institution to be taken into account in order to determine that contribution.

13 In the second stage of the calculation of the *ex ante* contribution, the SRB adjusted the basic annual contribution in line with the risk profile of the institution concerned, in accordance with point (b) of the second subparagraph of Article 70(2) of Regulation No 806/2014. It assessed that risk profile on the basis of the four risk pillars set out in Article 6 of Delegated Regulation 2015/63, which are composed of risk indicators. With a view to classifying the institutions according to their level of risk, the SRB began by establishing – for each risk indicator applied for the 2021 contribution period – bins into which the institutions were grouped, in accordance with point 3 of 'Step 2' in Annex I to that delegated regulation. Institutions belonging to the same bin are assigned a common value for the particular risk indicator, referred to as the 'discretized value'. Combining the discretized values for each risk indicator, the SRB calculated the 'risk adjusting multiplier' of

the institution concerned ('the adjusting multiplier'). By multiplying the basic annual contribution of that institution by its adjusting multiplier, the SRB obtained the 'risk-adjusted basic annual contribution' of the institution.

14 Next, the SRB added together the risk-adjusted basic annual contributions to get a 'common denominator' which is used to calculate the share of the annual target level which each institution had to pay.

15 Finally, the SRB calculated the *ex ante* contribution of each institution by distributing the annual target level among all of the institutions on the basis of the ratio between the risk-adjusted basic annual contribution, on the one hand, and the common denominator, on the other hand.

16 Annex I to the contested decision contains an individual sheet for each institution subject to the payment of the *ex ante* contributions, including the applicant, which includes the results of the calculation of the *ex ante* contribution of each of those institutions ('the individual sheet'). Each of those sheets sets out the amount of the basic annual contribution of the institution concerned as well as the value of its adjusting multiplier, both on the union base and on the national base, stating for each risk indicator the number of the bin to which that institution was assigned. In addition, the individual sheet sets out the data used to calculate the *ex ante* contributions of all of the institutions concerned, which the SRB determined by adding together or combining the individual data of all of those institutions. Finally, that sheet includes the data reported by the institution concerned in the reporting form and used in the calculation of its *ex ante* contribution.

17 Annex II to the contested decision contains statistical data relating to the calculation of the *ex ante* contributions for each participating Member State, in summary and collective form. That annex states, inter alia, the total amount of the *ex ante* contributions to be paid by the institutions concerned for each of those Member States. Furthermore, the annex lists, for each risk indicator, the number of bins, the number of institutions belonging to each of the bins and the minimum and maximum values of those bins. In the case of the bins relating to the national base, those values are reduced or increased by a random amount for reasons of confidentiality, with the original distribution between the institutions being maintained.

18 Annex III to the contested decision, entitled 'Evaluation of the submissions made in the consultation on the 2021 ex-ante contributions to the Single Resolution Fund', examines the observations submitted by the institutions over the course of the consultation procedure conducted by the SRB between 5 and 19 March 2021 with a view to the adoption of the contested decision.

III. Forms of order sought

19 The applicant claims that the Court should:

– annul the contested decision, including the annexes thereto, in so far as that decision concerns it;

– in the alternative, declare that the contested decision is legally non-existent, in so far as that decision concerns it;

– order the SRB to pay the costs.

20 The SRB contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs;

– in the alternative, if the contested decision is annulled, maintain the effects of the contested decision until it is replaced or, at the very least, for a period of six months from the date on which the judgment becomes final.

21 The European Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

IV. Law

22 In support of its action, the applicant initially raised ten pleas in law:

– alleging, first, infringement of Article 81(1) of Regulation No 806/2014, read together with Article 3 of Council Regulation No 1, of 15 April 1958. determining the languages to be used by the European Economic Community (OJ, English Special Edition, Series I, 1952-1958, p. 59);

– alleging, second, infringement of the second paragraph of Article 296 TFEU and of Article 41(1) and (2)(c) of the Charter of Fundamental Rights of the European Union ('the Charter') on account of the failure to state adequate reasons for the contested decision;

– alleging, third, infringement of the right to effective judicial protection guaranteed by Article 47(1) of the Charter;

– based, fourth, on a plea of illegality in respect of Articles 4 to 9 of and Annex I to Delegated Regulation 2015/63, alleging infringement of the right to effective judicial protection guaranteed by Article 47(1) of the Charter and breach of the principle of legal certainty;

– based, fifth, on a plea of illegality in respect of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63, alleging infringement of Article 103(7)(h) of Directive 2014/59, of Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1), breach of the 'principle of the risk-adjusted calculation of the contributions', of the principle to specify rules based on the rule of law and of the obligation to take full account of the facts, because that provision cannot weight the 'membership in an IPS' risk indicator ('the IPS risk indicator'), taking into account the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability';

– alleging, sixth, infringement of Article 113(7) of Regulation No 575/2013, of Article 103(7)(h) of Directive 2014/59, of Articles 16 and 20 of the Charter, and breach of the principles of proportionality and good administration;

– based, seventh, on a plea of illegality in respect of Articles 6, 7 and 9 of and Annex I to Delegated Regulation 2015/63, alleging breach of the 'principle of the risk-adjusted calculation of the contributions', of Articles 16 and 20 of the Charter, of the principle of proportionality and of the obligation to take account of all of the facts;

– alleging, eighth, infringement of Articles 16 and 52 of the Charter, because the adjustment of the applicant's *ex ante* contribution according to its risk profile is inappropriate;

– alleging, ninth, infringement of Articles 16, 20, 41 and 52 of the Charter, because the contested decision is vitiated by a number of manifest errors of assessment;

– based, tenth, on a plea of illegality in respect of the first and second sentences of Article 20(1) of Delegated Regulation 2015/63, alleging infringement of Article 103(7) of Directive 2014/59 and breach of 'the principle of the risk-adjusted calculation of the contributions'.

23 In addition, in its reply, the applicant raised an eleventh plea in law, alleging, first, infringement of Article 70(2) of Regulation No 806/2014 and of Articles 16 and 17 of the Charter and, second, based on a plea of illegality in respect of Articles 69 and 70 of Regulation No 806/2014, alleging breach of the 'principle of the risk-adjusted calculation of the contributions', of the principle of proportionality, of Articles 16 and 17 of the Charter, of the requirements of the rule of law and of the principles arising from the judgment of 13 June 1958, *Meroni* v *High Authority* (10/56, EU:C:1958:8).

24 It is appropriate to begin by examining the pleas by which the applicant raises a plea of illegality with regard to Articles 4 to 9 and 20 of and Annex I to Delegated Regulation 2015/63, before turning to the pleas directly concerning the lawfulness of the contested decision.

A. The pleas of illegality in respect of Articles 4 to 9 and 20 of and Annex I to Delegated Regulation 2015/63

1. The fourth plea, based on a plea of illegality in respect of Articles 4 to 9 of and Annex I to Delegated Regulation 2015/63, because they breach the principles of effective judicial protection and legal certainty

25 The fourth plea is divided into two parts.

26 As a preliminary point, it must be observed that Article 4 of Delegated Regulation 2015/63 provides that the SRB is to determine the *ex ante* contribution 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 Articles 4 to 13 of that delegated regulation.

27 Article 5 of Delegated Regulation 2015/63, entitled 'Risk adjustment of the basic annual contribution', sets out, inter alia, which liabilities are excluded from the calculation of those contributions. Article 6 of that delegated regulation lists the risk pillars and indicators which the SRB must take into account to assess the risk profile of institutions, whilst Article 7 of the delegated regulation specifies the relative weight of each risk pillar and indicator which must be applied by the SRB when it assesses the risk profile of each institution.

28 Article 8 of Delegated Regulation 2015/63 relates to the application of the risk indicators in specific cases.

29 Furthermore, Article 9 of Delegated Regulation 2015/63, entitled 'Application of the risk adjustment to the basic annual contribution', provides that the SRB is to determine the adjusting multiplier on the basis of the risk indicators indicated in Article 6 of that delegated regulation in accordance with the formula and the procedures set out in Annex I to the delegated regulation, and that it is to determine the annual contribution of each institution for each contribution period by multiplying the basic annual contribution by that adjusting multiplier in accordance with the formula and the procedures set out in Annex I to the same delegated regulation.

30 Lastly, Annex I to Delegated Regulation 2015/63 lays down the procedure for the calculation of the annual contributions of institutions over several steps.

(a) The first part, concerning an alleged breach of the principle of effective judicial protection

31 The applicant submits that Articles 4 to 9 of and Annex I to Delegated Regulation 2015/63 breach the principle of effective judicial protection, as enshrined in Article 47(1) of the Charter. First of all, those provisions create an opaque system for the calculation of *ex ante* contributions, as they provide, for the purposes of that calculation, for the use of information that constitutes business secrets, which prevents the SRB from providing an adequate statement of reasons for the decisions determining those contributions. Despite the fact that the amount of the *ex ante* contribution of each institution is dependent on data relating to other institutions, the confidential nature of those data prevents their disclosure to the institution concerned.

32 Next, the provisions create a system for the determination of *ex ante* contributions which is characterised by a number of instances of discretion exercised by the SRB, which further increases the opacity of the rules concerned.

33 Finally, it is not possible for the Court to review the legality of the contested decision, since it does not have the software used by the SRB to calculate the *ex ante* contributions; that software is needed in order to verify the calculation of those contributions.

34 The SRB and the Commission dispute that line of argument.

35 Articles 4 to 9 of Delegated Regulation 2015/63 set out, as is clear from paragraphs 26 to 30 above, the rules which the SRB is required to apply in order to determine the basic annual contribution and to adjust that contribution in proportion to the institutions' risk profile. Those rules are then implemented, in more concrete terms, in Annex I to that delegated regulation.

36 Under those provisions, the adjustment of the basic annual contribution of each establishment in proportion to its risk profile is based on a comparison of the individual data from all of the institutions concerned. However, the SRB takes the view that all of those data constitute business secrets and that, therefore, it cannot communicate them to the institutions whose *ex ante* contribution is calculated in the decision determining the amount of those contributions.

37 If the judicial review guaranteed by Article 47 of the Charter is to be effective, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the

authority concerned to provide that information, so as to make it possible for him or her to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the decision in question (see judgments of 26 April 2018, *Donnellan*, C-34/17, EU:C:2018:282, paragraph 55, and of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43).

38 In addition, having regard to the adversarial principle that forms part of the rights of the defence which are referred to in Article 47 of the Charter, the parties to a case must have the right to examine all the documents or observations submitted to the court for the purpose of influencing its decision, and to comment on them. The fundamental right to an effective legal remedy prevents a judicial decision from being founded on facts and documents which the parties themselves, or one of them, have not had an opportunity to examine and on which they have therefore been unable to state their views (see judgments of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraphs 55 and 56, and of 23 October 2014, *Unitrading*, C-437/13, EU:C:2014:2318, paragraph 21).

39 However, in certain exceptional cases, an EU authority may preclude the disclosure to the person concerned of the precise and full grounds which form the basis of a decision taken against that person, relying on reasons covered by the protection of confidential data. In such a case, it is necessary to apply the techniques and rules of law which accommodate, on the one hand, legitimate considerations relating to the protection of confidential data taken into account in the adoption of such a decision and, on the other hand, the need sufficiently to guarantee to an individual respect for his or her procedural rights, such as the right to be heard and the requirement for an adversarial process (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraphs 115 to 120; see also, to that effect and 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, paragraph 125).

40 In the light of the specific nature of the *ex ante* contributions, such an accommodation must also be made in the case of the calculation of those contributions. As is apparent from recitals 105 to 107 of Directive 2014/59 and from recital 41 of Regulation No 806/2014, the purpose of those contributions is to ensure, 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. Thus, the calculation of the *ex ante* contributions is based not on the application of a rate to a basis of assessment but rather, in accordance with Articles 102 and 103 of Directive 2014/59 as well as Articles 69 and 70 of Regulation No 806/2014, on the fixing of a final target level that must be met by an aggregate of all of the contributions collected before 31 December 2023 ('the final target level'), and thereafter on an annual target level to be apportioned between the institutions authorised in the territories of the participating Member States (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 113).

41 Since the final 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 net liabilities, with respect to the aggregate net liabilities of all the institutions authorised in the territories of all of the participating Member States, it becomes clear that the

very principle of the method of calculating *ex ante* contributions, as set out in Directive 2014/59 and Regulation No 806/2014, means that the SRB must use data which are business secrets (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 114).

42 EU institutions and bodies are, in principle, required, in accordance with the principle of the protection of business secrets, which is a general principle of EU law, 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 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraphs 109 and 114 and the case-law cited).

43 In those circumstances, it fell to the Commission and to the Council of the European Union, when establishing the system of calculating *ex ante* contributions by means of Delegated Regulation 2015/63 and Implementing Regulation 2015/81, to reconcile respect for business secrets with the principle of effective judicial protection, such that data constituting business secrets cannot be disclosed to the persons concerned and those data cannot, inter alia, be included in the statement of reasons for the decisions determining the amount of *ex ante* contributions.

44 That feature of the system of calculating *ex ante* contributions does not however prevent the Courts of the European Union from conducting an effective judicial review.

45 First, nothing in the provisions which the applicant pleads are unlawful precludes the SRB, in accordance with the first subparagraph of Article 88(1) of Regulation No 806/2014, from disclosing, when adopting its decision determining the *ex ante* contributions, confidential information received in the context of its activity in summary or collective form, such that the institutions concerned cannot be identified (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 136).

46 Second, where the statement of reasons for such a decision has to be limited in order to ensure the protection of confidential data, it is for the decision-maker, in the event of submissions before the Courts of the European Union calling those data into question, to establish its case before them in the course of their investigation (see, to that effect, judgments 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, and of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 145).

47 Where appropriate, in order to carry out an effective judicial review, in accordance with the requirements of Article 47 of the Charter, the Courts of the European Union 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 (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 146).

48 In addition, when carrying out an examination of all of the matters of fact or law produced by the SRB, it is for the Courts of the European Union to determine whether the reasons relied on by the SRB as grounds to preclude the disclosure of the data used for the purposes of calculating the *ex*

ante contribution are well founded (see, to that effect and 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, paragraph 126).

49 If it turns out that the reasons relied on by the SRB do indeed preclude the disclosure of information or evidence produced before the Courts of the European Union, it is necessary to strike an appropriate balance between the requirements attached to the right to effective judicial protection, in particular respect for the principle of an adversarial process, and those flowing from the protection of business secrets (see, to that effect and 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, paragraph 128).

50 It follows from the foregoing that the calculation of the *ex ante* contributions on the basis of data constituting business secrets, in accordance with Articles 4 to 9 of and Annex I to Delegated Regulation 2015/63, without those data being made available to the persons concerned, does not in itself mean that those provisions are incompatible with the principle of effective judicial protection.

51 As regards the applicant's argument based on the discretion enjoyed by the SRB, it follows from case-law that if, in fields giving rise to complex economic assessments, an institution or body of the European Union enjoys discretion in economic matters, this does not mean that the European Union judicature must refrain from reviewing the interpretation, by that institution or body, of data of an economic nature. The European Union judicature must, inter alia, establish not only whether the evidence relied on was factually accurate, reliable and consistent, but also whether that evidence contained all the relevant information which must be taken into account in order to assess a complex situation and whether it was capable of substantiating the conclusions drawn from it (see judgment of 10 December 2020, *Comune di Milano* v *Commission*, C-160/19 P, EU:C:2020:1012, paragraph 115 and the case-law cited).

52 In those circumstances, the mere fact that the SRB enjoys some discretion cannot mean that the Court is prevented from conducting an effective judicial review of the contested decision.

53 Lastly, the applicant's argument that Delegated Regulation 2015/63 breaches the principle of effective judicial protection because the Courts of the European Union cannot establish the accuracy of the calculation of the amount of the *ex ante* contribution of a particular institution must be rejected.

54 In that regard, the applicant simply claims, without providing further clarifications, that, in order to establish such accuracy, the Court must have access to the software used by the SRB, which has not however been made available to it. However, that fact cannot call into question the legality of Articles 4 to 9 of and of Annex I to Delegated Regulation 2015/63. In addition, nor do those provisions preclude the Court from adopting, from amongst the measures laid down inter alia in its Rules of Procedure, those which it deems appropriate to be able to verify the amount of the *ex ante* contribution.

55 In the light of the foregoing, the first part of the fourth plea must be dismissed.

(b) The second part, concerning an alleged breach of the principle of legal certainty

56 The second part of the fourth plea is divided, in essence, into three complaints.

(1) The first complaint, alleging that Articles 4 to 9 of and Annex I to Delegated Regulation 2015/63 prevent the institutions from calculating their ex ante contributions in advance

57 The applicant claims that Articles 4 to 9 of and Annex I to Delegated Regulation 2015/63 breach the principle of legal certainty since they prevent it from calculating in advance the *ex ante* contribution to which it is liable in the course of a contribution period on account of the many instances of discretion afforded to the SRB by those provisions. Furthermore, the SRB made use of such discretion by adopting internal decisions which specified the methodology to be followed to calculate the *ex ante* contributions ('the interim decisions') but which have neither been published nor made accessible to the applicant. This shows that the structure of the contested provisions of the delegated regulation does not provide the 'appropriate depth' to rule out any arbitrary conduct on the part of the EU authorities concerned.

58 The SRB and the Commission dispute that line of argument.

59 As a preliminary point, it is necessary to define the exact scope of this plea of illegality.

60 In that regard, first, it must be observed that, despite the title given to the plea of illegality, as worded by the applicant, the latter's line of argument is focussed on the compatibility of Articles 6 and 7 of Delegated Regulation 2015/63 with the principle of legal certainty. However, the applicant does not put forward any independent and targeted line of argument concerning the legality of Articles 4, 5, 8 and 9 of that delegated regulation or of Annex I thereto which goes beyond its arguments relating to Articles 6 and 7 of the delegated regulation. In those circumstances, it must be inferred from that fact that the present plea of illegality concerns, in reality, Articles 6 and 7 of Delegated Regulation 2015/63.

61 Second, it should be noted that, under those provisions, it falls to the SRB to adjust the basic annual contribution of the institutions taking into account four risk pillars, with each pillar being composed of risk indicators which, in turn, may be composed of risk sub-indicators.

62 With regard to the first three risk pillars set out in Article 6(1)(a) to (c) of Delegated Regulation 2015/63, the applicant has not presented to the Court any specific evidence to challenge their legality on account of their alleged contradiction with the principle of legal certainty. In addition, as for the risk pillar mentioned in Article 6(1)(d) of that delegated regulation, entitled 'Additional risk indicators to be determined by the resolution authority' ('risk pillar IV'), the applicant has not argued that the risk indicator 'extent of previous extraordinary public financial support', which is one of the risk indicators of risk pillar IV, lacks clarity and is therefore contrary to that principle.

63 In those circumstances, it must be inferred that the present plea of illegality concerns the alleged non-compliance with the principle of legal certainty of the risk indicators of risk pillar IV, except for the risk indicator 'extent of previous extraordinary public financial support'.

64 Those clarifications being made, it must be recalled that, according to case-law, the principle of legal certainty requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular, where they may have adverse consequences. That principles requires, inter alia, that legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps

accordingly (judgments of 29 April 2021, *Banco de Portugal and Others*, C-504/19, EU:C:2021:335, paragraph 51, and of 16 February 2022, *Poland* v *Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 319).

65 However, those requirements cannot be interpreted as precluding an EU institution from having recourse, in a norm that it adopts, to an abstract legal notion, nor as requiring that such an abstract norm refer to the various specific hypotheses to which it applies, given that all those hypotheses could not be determined in advance by that institution (see, by analogy, judgments of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraphs 39 and 40, and of 16 February 2022, *Poland* v *Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 320).

66 Accordingly, a provision of an act of the European Union does not breach the principle of legal certainty, on account of its lack of clarity, unless it displays such ambiguity as to prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of that provision (see, to that effect, judgments of 14 April 2005, *Belgium* v *Commission*, C-110/03, EU:C:2005:223, paragraph 31, and of 22 May 2007, *Mebrom* v *Commission*, T-216/05, EU:T:2007:148, paragraph 108).

67 Similarly, the fact that an act of the European Union confers discretion on the authorities responsible for implementing it is not itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim in question, to give adequate protection against arbitrary interference (see judgment of 16 February 2022, *Poland* v *Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 321 and the case-law cited).

68 In the light of those considerations, it is necessary to examine whether the method of calculating the *ex ante* contributions, in so far as it is influenced by risk pillar IV, is defined with sufficient precision so that individuals can resolve with sufficient certainty any doubts as to the scope or meaning of the provisions relating to that risk pillar.

69 In that regard, it must be observed that the applicant does not claim that the notions used in Articles 6 and 7 of Delegated Regulation 2015/63 are so ambiguous that any doubts as to their scope or meaning cannot be resolved with sufficient certainty.

70 As regards, in particular, the terms used in Article 6(6) of Delegated Regulation 2015/63, the applicant conceded at the hearing, in essence, that it understood the meaning which was to be given to those terms. It is true that it did not agree with the SRB's interpretation of some of those same terms, in particular the terms 'overall business model', but it did not dispute that they had a meaning that could be ascertained, and therefore that any doubts as to their scope or meaning could be resolved with sufficient certainty.

71 This is a fortiori the case since the majority of the terms used in Article 6(6) of Delegated Regulation 2015/63 were defined in recital 98 of the contested decision and in footnotes 36 to 40 to that decision, which refer to a number of provisions of the applicable legislation. The applicant has not, however, argued that those definitions were unclear from those provisions.

72 However, it must be observed, as the applicant points out, that Articles 6 and 7 of Delegated Regulation 2015/63 do afford discretion to the SRB.

73 In accordance with the first subparagraph of Article 6(5) of Delegated Regulation 2015/63, risk pillar IV consists of three risk indicators, namely, first, 'trading activities, off-balance sheet exposures, derivatives, complexity and resolvability', second, 'membership in an [IPS]', and, third, 'extent of previous extraordinary public financial support'.

74 Under the second subparagraph of Article 6(5) of Delegated Regulation 2015/63, when determining those risk indicators, the SRB must take account of 'the probability that the institution concerned would enter resolution and of the consequent probability of making use of the resolution financing arrangement where the institution would be resolved'.

75 It follows from the wording of the second subparagraph of Article 6(5) of Delegated Regulation 2015/63 that that provision confers discretion on the SRB as to how it is to 'take into account', for the purposes of determining those risk indicators, 'the probability that the institution concerned would enter resolution and the consequent probability of making use of the resolution financing arrangement where the institution would be resolved', because the criteria stated in the provision require clarification by the SRB in order to be applied to a particular case.

76 As regards the first risk indicator under risk pillar IV, which concerns trading activities, off-balance sheet exposures, derivatives, complexity and resolvability, Article 6(6) of Delegated Regulation 2015/63 provides for several elements which the SRB must take into account when determining that indicator, some of which may lead to the risk profile of the institution concerned being increased and others which may see it decrease.

77 Thus, the four elements capable of entailing an increase in that risk profile are as follows: first, 'the importance of trading activities relative to the balance sheet size, the level of own funds, the riskiness of the exposures, and the overall business model'; second, 'the importance of the off-balance sheet exposures relative to the balance sheet size, the level of own funds, and the riskiness of the exposures'; third, 'the importance of the amount of derivatives relative to the balance sheet size, the level of own funds, the riskiness of the exposures, and the overall business model; and, fourth, 'the extent to which … the business model and organisational structure of an institution are deemed complex'.

78 There are two elements which may result in the risk profile being decreased, namely 'the relative amount of derivatives which are cleared through a central counterparty (CCP)' and 'the extent to which … an institution can be resolved promptly and without legal impediments'.

79 It is apparent from the wording of Article 6(6) of Delegated Regulation 2015/63 that that provision affords the SRB discretion as regards the 'importance' which the SRB must attach to the 'trading activities', the 'off-balance sheet exposures' and the 'amount of derivatives', as well as the relationship between the various elements mentioned in that provision.

80 Thus, whilst it follows from Article 6(6) of Delegated Regulation 2015/63 that, according to the first risk sub-indicator mentioned in that provision, the importance of the 'trading activities' must be compared with the balance sheet size, the level of own funds, the riskiness of the exposures and the overall business model, the provision does not specify how that comparison is to be made.

81 The same is true of the second and third risk sub-indicators provided for in Article 6(6)(a)(ii) and (iii) of Delegated Regulation 2015/63.

82 Furthermore, as for the determination of the IPS risk indicator, it follows from Article 6(7) of Delegated Regulation 2015/63 that the SRB is to take into account the adequacy of the amount of funds which are available without delay together with the amount of funds needed 'for a credible and effective support of [the institution concerned]', as well as the degree of legal or contractual certainty that those funds 'will be fully utilized before any extraordinary public support may be requested'.

83 It is clear from the wording of that provision that the SRB enjoys discretion as regards compliance with the conditions laid down in the provision, which relate to the adequacy of the available funds of the IPS in question together with the funds needed for the funding of the institution at issue and to the degree of legal or contractual certainty relating to those funds.

84 The same is true vis-à-vis the weight of the different risk indicators in the context of risk pillar IV, as provided for in Article 7(4) of Delegated Regulation 2015/63.

85 Although Article 7(4) of Delegated Regulation 2015/63 does clearly state the relative weight of the three risk indicators which make up risk pillar IV and are mentioned in paragraph 73 above, it is unclear from that provision how the different risk sub-indicators within the first two risk indicators are to be weighted. In particular, the provision does not specify whether that weight must be divided between such risk indicators proportionately. Thus, Article 7(4) of Delegated Regulation 2015/63 affords the SRB discretion as regards determining the weight of the various risk sub-indicators making up those risk indicators, which have to be taken into account in accordance with Article 6(5) to (7) of Delegated Regulation 2015/63.

86 In those circumstances, it is necessary to examine whether Article 6(5) to (7) and Article 7(4) of Delegated Regulation 2015/63 can be regarded, in accordance with the case-law cited in paragraph 67 above, as provisions which indicate with sufficient clarity the scope of the discretion conferred on the SRB and the manner of its exercise, having regard to the legitimate aim in question, such that they give adequate protection against arbitrary interference and individuals can resolve with sufficient certainty any doubts as to the scope or meaning of those provisions.

87 Where a provision confers a power to impose financial charges on the institutions or bodies of the European Union, it is necessary to determine in the light of all the relevant factors whether that provision indicates with sufficient clarity the scope of such a power and the manner of its exercise, so as to allow individuals to foresee the circumstances in which such a charge will be imposed (see, to that effect and by analogy, judgment of 16 February 2022, *Poland* v *Parliament and Council*, C-157/21, EU:C:2022:98, paragraphs 319 to 321).

88 In particular, it is necessary to assess whether a prudent trader, if need be by taking legal and economic advice, can foresee in a sufficiently precise manner the method of calculation and the order of magnitude of such charges, it being understood that the fact that that trader cannot know in advance precisely the level of those charges which the institution or the body of the European Union will impose in each individual case cannot constitute a breach of the principle of legal certainty (see, to that effect and by analogy, judgments of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 95, and of 18 July 2013, *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraph 58 and the case-law cited).

89 In that regard, it is necessary, specifically, to assess whether the institution or the body of the European Union is guided in the exercise of its discretion by certain objective indications which allow individuals to foresee in a sufficiently precise manner the method of calculation and the order of magnitude of the charges to be imposed. Those indications include, inter alia, the rules of conduct which the institution or body of the European Union has imposed on itself in this field and which limit its discretion (see, to that effect, judgment of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 95). However, such indications can also stem from the consistent, familiar and accessible administrative practice of that institution or body (see, to that effect, judgment of 12 December 2012, *Ecka Granulate and non ferrum Metallpulver* v *Commission*, T-400/09, not published, EU:T:2012:675, paragraph 31).

90 Similarly, a clear definition in the applicable legislation of the result to be achieved can be a relevant indication for individuals which allows them to foresee how an institution or body of the European Union will exercise its discretion (see, by analogy, judgment of 4 May 2016, *Pillbox 38*, C-477/14, EU:C:2016:324, paragraph 100). This is especially the case where the specific method or process for the purposes of the fulfilment of that result is laid down in the legislation at issue (see, to that effect, judgment of 4 May 2016, *Pillbox 38*, C-477/14, EU:C:2016:324, paragraph 101).

91 In the present case, it must be observed, in the first place, that the applicable legislation lays down the result to be achieved, namely that the available financial means in the SRF must reach the final target level by the end of the initial period of eight years from 1 January 2016 ('the initial period'), and a method to achieve that result, which reduces the impact of the discretion exercised by SRB when determining the *ex ante* contributions. First, the amount of the *ex ante* contribution of each institution is dependent on the amount of the annual target level determined by the SRB on the basis of its estimate of the amount corresponding, on 31 December 2023, to at least 1% of the covered deposits in all of the participating Member States, pursuant to Article 69(1) and (2) of Regulation No 806/2014.

92 Second, as is clear from paragraph 12 above, the *ex ante* contribution of each institution is determined, inter alia, on the basis of the basic annual contribution, which is calculated using the amounts of net liabilities of the institutions concerned. The SRB does not exercise any discretion in connection with the determination of those amounts. In addition, the institution concerned is aware of the amount of its net liabilities and can access the overall amount of the net liabilities of the other institutions, without being able to demand, on account of the protection of business secrets, access to the individual confidential data of other institutions in order to verify the calculation of those amounts (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraphs 114 to 125).

93 In the second place, the basic annual contribution is adjusted in the light of the risk profile of the institution concerned, it being understood that, in accordance with Article 9(3) of Delegated Regulation 2015/63, the adjusting multiplier is to range between 0.8 and 1.5.

94 That adjustment is calculated on the basis of the assessment of the four risk pillars provided for in Article 6 of Delegated Regulation 2015/63. As has been stated in paragraph 62 above, the applicant has not submitted any evidence to the Court to show that the first three risk pillars lack clarity; those pillars determine 80% of the risk profile of each institution, pursuant to Article 7(1) of that delegated regulation.

95 Similarly, the applicant has not raised the lack of clarity of the risk indicator 'extent of previous extraordinary public financial support', which is part of risk pillar IV and which, under point (c) of the first subparagraph of Article 7(4) of Delegated Regulation 2015/63, has a weight of 10% within that pillar.

96 It follows that the risk indicators which the applicant claims lack clarity and in respect of which the SRB exercise some discretion influence the risk profile of the institution only to a level of less than 20%. In addition, the impact of those indicators on the final amount of the *ex ante* contribution is further reduced by the fact that the SRB does not exercise any discretion as regards the determination of the amount of the basic annual contribution and that the adjustment of that contribution to the risk profile of an institution is significantly restricted within a pre-determined range of between 0.8 and 1.5, as set out in paragraph 93 above.

97 In those circumstances, the scope of the discretion conferred on the SRB by Article 6(5) to (7) and Article 7(4) of Delegated Regulation 2015/63 and the manner of its exercise cannot be regarded as being insufficiently limited or defined with insufficient clarity, having regard to the legitimate aim in question, and cannot therefore be regarded as failing to give adequate protection against arbitrary interference.

98 This is a fortiori the case since the applicant is a prudent trader who, if need be by taking legal and economic advice, can foresee in a sufficiently precise manner the method of calculation and the order of magnitude of its *ex ante* contribution.

99 That conclusion is not called into question by the applicant's argument that Articles 6 and 7 of Delegated Regulation 2015/63 breach the principle of legal certainty because the SRB has exercised the discretion conferred by those provisions by means of interim decisions which have not been published or otherwise made accessible.

100 The adoption of any such decisions or their lack of accessibility is a matter for the SRB and is not provided for in Articles 6 and 7 of Delegated Regulation 2015/63.

101 In the light of the foregoing, it must be concluded that the applicant has failed to establish that Articles 6 and 7 of Delegated Regulation 2015/63 breached the principle of legal certainty.

102 Accordingly, the first complaint of the second part of the fourth plea must be dismissed.

(2) The second complaint, alleging that the Commission could have established an alternative method of calculation of the ex ante *contributions*

103 The applicant claims that the Commission could have established a method of calculation of the *ex ante* contributions which takes into account only the data of the institution concerned, such that there would be no need to use confidential data of other institutions. Such a method of calculation would thus provide the applicant with a better understanding of the scope of its obligations and would not, therefore, conflict with the principle of legal certainty.

104 The SRB disputes that line of argument.

105 As a preliminary point, it must be recalled that, in the context of a delegated power under Article 290 TFEU, the Commission enjoys, in the exercise of the powers conferred on it, broad discretion where it is called on, inter alia, to undertake complex assessment and evaluations (see, to that effect, judgment of 11 May 2017, *Dyson* v *Commission*, C-44/16 P, EU:C:2017:357, paragraph 53 and the case-law cited).

106 That is the case in connection with the determination of the criteria for adjustment of the *ex ante* contributions in proportion to the risk profile pursuant to Article 103(7) of Directive 2014/59.

107 In that regard, it must be borne in mind that the specific nature of those contributions 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 (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 113).

108 In that context, and is clear from recital 114 of Directive 2014/59, the EU legislature tasked the Commission with specifying, by delegated act, the manner in which the institutions' contributions to resolution financing arrangements are to be adjusted in proportion to their risk profile.

109 Similarly, recital 107 of that directive states that, in order to ensure a fair calculation of the *ex ante* contributions to national financing arrangements and provide incentives to operate under a less risky model, those considerations must take account of the credit, liquidity and market risk incurred by the institutions.

110 It follows from the foregoing that the Commission had to draw up rules for adjustment of the *ex ante* contributions in proportion to the risk profile of the institutions in pursuit of two linked objectives, namely, first, to ensure account is taken of the different risks to which the activities of – banking or, more broadly, financial – institutions give rise and, second, to encourage those same institutions to operate under a less risky model.

111 In addition, as is clear from the documents related to the adoption of Delegated Regulation 2015/63, in particular the document entitled 'JRC technical work supporting Commission second level legislation on risk based contributions to the (single) resolution fund' ('the JRC technical study') and 'Commission Staff Working Document: estimates of the application of the proposed methodology for the calculation of contributions to resolution financing arrangements', the drawing up of such rules entailed complex assessments and evaluations on the part of the Commission, since it had to examine the different factors in the light of which various types of risk were perceived in the banking and financial sectors.

112 In those circumstances, as regards the method of adjusting the basic annual contributions pursuant to Article 103(7) of Directive 2014/59, the review by the Courts of the European Union must be limited to verifying whether the exercise of the discretion afforded to the Commission has been vitiated by a manifest error of assessment or a misuse of powers, or whether the Commission has manifestly exceeded the limits of that discretion (see, to that effect, judgment of 21 July 2011, *Etimine*, C-15/10, EU:C:2011:504, paragraph 60).

113 In the present case, it must be observed, first, that the applicant does not explain how the mere fact that the Commission could have established a method of calculation of the *ex ante* contributions other than the method introduced by Delegated Regulation 2015/63 means that the latter is vitiated by such a manifest error of assessment or misuse of powers, that it manifestly exceeds the limits of the discretion afforded to the Commission, or that it breaches the requirements of the principle of legal certainty, as recalled in paragraph 64 above.

114 Moreover, it is true that, without the data relating to the other institutions, which constitute business secrets and cannot therefore be shared with the applicant, the latter cannot calculate in advance the exact amount of the *ex ante* contributions to which it is liable.

115 However, as noted in paragraph 41 above, the very principle of the method of calculation of the *ex ante* contributions, as is apparent from Directive 2014/59 and from Regulation No 806/2014, the validity of which has not been contested, entails the use by the SRB of data which are business secrets.

116 In those circumstances, the mere fact that the Commission could have adopted an alternative method of calculation of the *ex ante* contributions does not constitute a breach of the principle of legal certainty.

117 That complaint must therefore be dismissed.

(3) The third complaint, alleging infringement of Article 12 of Regulation 2016/1011

118 The applicant submits that Articles 6 and 7 of Delegated Regulation 2015/63 do not satisfy the requirement laid down in Article 12(1)(b) of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ 2016 L 171, p. 1). Under that provision, in order to determine a benchmark in the field of financial market regulation, a methodology must be used which 'has clear rules identifying how and when discretion may be exercised in the determination of that benchmark'.

119 The SRB disputes that line of argument.

120 It must be observed that Regulation 2016/1011 concerns, as is clear not least from its title, the indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.

121 Given that fact, Regulation 2016/1011 does not apply to the determination of *ex ante* contributions. The applicant cannot therefore claim that Delegated Regulation 2015/63 is incompatible with the requirements of transparency and precision arising from Article 12 of that regulation.

122 This complaint must therefore be rejected.

(c) Conclusion on the fourth plea

123 In the light of the foregoing, the fourth plea must be dismissed.

2. The fifth plea, based on a plea of illegality in respect of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63, because it infringes a number of higher-ranking rules

124 The fifth plea is divided into four parts.

(a) The first part, concerning the incompatibility of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 with Article 103(7)(h) of Directive 2014/59 and Article 113(7) of Regulation No 575/2013

125 The applicant claims that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 is incompatible with Article 103(7)(h) of Directive 2014/59 and Article 113(7) of Regulation No 575/2013 in so far as it provides for a relative weight for the IPS risk indicator which differentiates between institutions belonging to the same IPS, since when applying that weight the SRB has to take into account the weight of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'.

126 Specifically, the protective effect of an IPS exists, in accordance with Article 113(7) of Regulation No 575/2013, broadly and equally for all institutions which are members of that scheme. In addition, there is a guarantee that the funds of the IPS will be used in their entirety before extraordinary public financial support is requested, in accordance with Article 113(7)(b) of Regulation No 575/2013.

127 In those circumstances, differentiating between institutions belonging to the same IPS on the basis of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability', pursuant to the second subparagraph of Article 7(4) of Delegated Regulation 2015/63, is incompatible with the homogeneous and consistent treatment of all members of such an IPS required by Article 103(7)(h) of Directive 2014/59 and Article 113(7) of Regulation No 575/2013.

128 The SRB and the Commission dispute that line of argument.

129 Under the second subparagraph of Article 7(4) of Delegated Regulation 2015/63, when applying the IPS indicator, the SRB is to take into account the relative weight of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'.

130 It follows that, where several institutions are part of the same IPS, the institutions assigned a better weight in relation to the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' as compared with other members of that IPS may be assigned a more favourable weight in the context of the IPS risk indicator as compared with those other members.

131 In that context, it follows from Article 103(7)(h) of Directive 2014/59 that the Commission is empowered to adopt delegated acts in order to specify the notion of 'adjusting [basic annual] contributions in proportion to the risk profile of the institutions', 'taking into account' the fact that the institution is part of an IPS.

132 However, nothing in Article 103(7)(h) of Directive 2014/59 or in the remainder of that article explains how the Commission is to take account of that membership in an IPS. Thus, it is not provided that the Commission must assign the same weight to all of the institutions which are part of the same IPS.

133 In addition, as is clear from paragraphs 107 to 111 above, the Commission enjoys broad discretion as regards the method of adjustment of the basic annual contributions under Article 103(7) of Directive 2014/59, including the determination of the criterion regarding the institutions' membership in an IPS. Accordingly, the review by the Courts of the European Union must be limited to verifying whether the exercise of that discretion is vitiated by a manifest error of assessment or a misuse of powers, or whether the Commission has manifestly exceeded the limits of that discretion.

134 In that regard, first of all, the SRB and the Commission explained, without being contradicted on that point, that the members of an IPS, such as that to which the applicant belongs, were not unconditionally entitled to receive from such an IPS support covering all of their liabilities, rather that the IPS enjoyed some discretion in deciding whether or not one of its members should be supported.

135 Next, the SRB and the Commission stated that the failure of an institution with a broad and complex balance sheet could completely exhaust the funds of such an IPS. The applicant has not adduced any evidence to contest that allegation.

136 Furthermore, the applicant has not presented to the Court any specific evidence intended to call into question the fact that the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' enables an assessment as to whether an institution has a broad and complex balance sheet.

137 In those circumstances, the applicant has not shown that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 was vitiated by a manifest error of assessment or a misuse of powers or that it manifestly exceeds the limits of the discretion conferred on the Commission by Article 103(7)(h) of Directive 2014/59.

138 As regards, finally, the plea of illegality based on the incompatibility of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 with Article 113(7) of Regulation No 575/2013, it must be stated, first, that the latter provision lays down the conditions for the authorisation of IPS for prudential purposes, and not the calculation of *ex ante* contributions.

139 It is true that, pursuant to Article 2(1)(8) of Directive 2014/59, the SRB can only take account of IPS which have been authorised in accordance with Article 113(7) of Regulation No 575/2013. However, nothing in the wording of Article 113(7) of that regulation prohibits a differentiation being made between institutions which are members of the same IPS for the purposes of the calculation of *ex ante* contributions.

140 In addition, although Article 113(7)(b) of Regulation No 575/2013 provides that, in order to be recognised for prudential purposes, the IPS must be able to grant the support necessary to its members, in accordance with its obligations, from funds readily available to it, that provision does not go as far as requiring that an IPS has sufficient resources to prevent the resolution of all of its members, including all of the large institutions.

141 That conclusion is not invalidated by Article 5 of Guideline (EU) 2016/1994 of the European Central Bank (ECB) of 4 November 2016 on the approach for the recognition of [IPS] for prudential purposes by national competent authorities pursuant to Regulation No 575/2013

(OJ 2016 L 306, p. 37), upon which the applicant relies. Nor does that provision, which contains guidance for the application of Article 113(7)(b) of Regulation No 575/2013, state that an IPS must have sufficient resources to prevent the resolution of all of its members.

142 In the light of the foregoing, the first part of the fifth plea must be dismissed.

(b) The second part, concerning the incompatibility of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 with the 'principle of the risk-adjusted calculation of the contributions' and the principle of equal treatment

143 The second part of the fifth plea is divided, in essence, into two complaints.

(1) The first complaint, alleging breach of the 'principle of the risk-adjusted calculation of the contributions'

144 The applicant claims that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 breaches the 'principle of the risk-adjusted calculation of the contributions', which derives from the principle of proportionality enshrined in Articles 16, 17 and 52 of the Charter, from Article 70(2) of Regulation No 806/2014 and from Article 103(2) and (7) of Directive 2014/59.

145 Having regard to that principle, it is not clearly and precisely shown how the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' attests to the risk of the applicant entering resolution in accordance with the second subparagraph of Article 6(5) of Delegated Regulation 2015/63.

146 In addition, there is not a sufficient objective link between the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability', contained in point (a) of the first subparagraph of Article 7(4) of Delegated Regulation 2015/63, and the risk indicator 'membership in an [IPS]', provided for in point (b) of the first subparagraph of Article 7(4) of the same delegated regulation, to justify a relative weight of the latter risk indicator.

147 Finally, by correlating those two risk indicators, Delegated Regulation 2015/63 introduces the double counting of the first risk indicator, which has already been taken into account in the calculation of the *ex ante* contribution pursuant to Article 6(5)(a) of that delegated regulation.

148 The SRB and the Commission dispute that line of argument.

149 Without it being necessary to examine whether Directive 2014/59 or another rule of EU law enshrines a 'principle of the risk-adjusted calculation of the contributions', the first complaint of the second part of the applicant's fifth plea must be understood as meaning that it submits, in essence, that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 is vitiated by a manifest error of assessment, because it prevents the SRB from making appropriate adjustments to the basic annual contributions in line with the actual risk profile of the institutions.

150 In that regard, it is apparent first and foremost from paragraphs 107 to 111 above that the Commission enjoys broad discretion as regards the application of Article 103(7)(h) of Directive 2014/59.

151 Next, the applicant has not presented to the Court any specific evidence intended to contest the SRB's claim that the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' constituted an objective criterion which enabled, in the context of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63, an assessment of the likelihood of an institution seeking support from an IPS which that IPS could not grant, such that that institution would risk entering resolution. Thus, there is nothing to show that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 does not allow the *ex ante* contribution to be adjusted to the actual risk profile of the institution concerned.

152 Finally, contrary to what the applicant claims, the method provided for in the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 does not result in the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' being counted twice.

153 First, the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' applies, pursuant to Article 6(5)(a) of Delegated Regulation 2015/63, to all of the institutions whose *ex ante* contribution is adjusted in proportion to their risk profile. However, for the purposes of applying the second subparagraph of Article 7(4) of that delegated regulation, that risk indicator applies only to those institutions in that category which belong to an IPS. Second, pursuant to Article 6(6) of Delegated Regulation 2015/63, the purpose of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' is to assess the risks of the institution in question, on account, inter alia, of the assets that it holds on its balance sheet, its economic model and its organisational structure. By contrast, when that risk indicator is applied in the context of the second subparagraph of Article 7(4) of that delegated regulation, it is used to weight the IPS risk indicator and is intended to assess the risks that an institution belonging to an IPS presents for the capacity of that IPS to intervene in support of its members. As follows from the considerations set out in paragraphs 163 and 164 below, the risks assessed by the application of the risk indicator may vary from one institution to another and may even be so high that an IPS is incapable of absorbing those risks should a member institution fail.

154 In those circumstances, the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 is not vitiated by a manifest error of assessment where it provides that the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' is to be taken into account as part of the process of determining the IPS risk indicator.

155 In the light of the foregoing, the first complaint of the second part of the fifth plea must be dismissed.

(2) The second complaint, concerning breach of the principle of equal treatment

156 The applicant claims that it is in the very nature of an IPS to protect all of its members, regardless of their specific risk position, in such a way that no institution can be put into resolution individually as long as the IPS exists and fulfils its function. Membership in an IPS is thus a factor which makes all of the institutions concerned comparable.

157 In addition, by allowing distinctions between those institutions, the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 breaches the principle of equal treatment, as enshrined in Article 20 of the Charter. There is no objective criterion which can justify that difference in treatment. The criterion provided for in the second subparagraph of Article 6(5) of

Delegated Regulation 2015/63, namely 'the probability that the institution concerned would enter resolution', has no objective connection with the criterion actually applied by Article 7(4) of that delegated regulation in order to weight the IPS risk indicator, namely the risk indicator 'trading activities, off-balance sheet exposures, derivatives, complexity and resolvability'.

158 The SRB and the Commission dispute that line of argument.

159 Article 20 of the Charter enshrines the principle of equal treatment, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 3 February 2021, *Fussl Modestraße Mayr*, C-555/19, EU:C:2021:89, paragraph 95).

160 In that regard, first of all, it is necessary to examine whether an institution belonging to an IPS, such as the applicant, is in a comparable situation to that of the other institutions belonging to that same IPS.

161 According to settled case-law, the comparable nature of different situations is assessed in the light of all the elements that characterise them. Those elements must, in particular, be determined and assessed in the light of the subject matter and purpose of the act making the distinction in question. In addition, the principles and objectives of the field to which the act relates must also be taken into consideration (see judgment of 3 February 2021, *Fussl Modestraße Mayr*, C-555/19, EU:C:2021:89, paragraph 99 and the case-law cited).

162 As for the principles and objectives of the field to which Delegated Regulation 2015/63 relates, it must be recalled that the specific nature of the *ex ante* contributions 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 (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 113).

163 In the light of those principles and objectives, it must be stated that, contrary to what the applicant claims, all of the institutions belonging to an IPS are not necessary in a comparable situation simply by virtue of that membership. As the SRB has noted, without being contradicted by the applicant, the members of an IPS, such as that to which the applicant belongs, are not unconditionally entitled to receive from the IPS support which would cover all of their liabilities, since the IPS has some discretion to decide whether it will support a member.

164 Next, the SRB and the Commission have stated that the failure of an institution with a broad and complex balance sheet could completely exhaust an IPS' funds, unlike the failure of institutions with more reduced and simple balance sheets. In addition, neither has the applicant produced evidence to contest that allegation.

165 Lastly, as is apparent from paragraph 151 above, the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' constitutes an objective criterion to assess which institutions belonging to an IPS risk requesting from that IPS support that the scheme could not grant. That indicator is therefore an objective criterion to assess which

institutions are in a comparable situation with regard to such a risk. This is a fortiori the case since that criterion is consistent with one of the principal objectives of the SRM, namely to encourage the institutions to adopt less risky methods of operation.

166 Accordingly, the second complaint of the second part of the fifth plea must be rejected, since the applicant is wrong to claim that all of the institutions in one and the same IPS are in a comparable situation.

(c) The third part, concerning the incompatibility of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 with the principle of legal certainty

167 The applicant submits that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 does not satisfy the requirements imposed by the principle of legal certainty. Specifically, that provision does not clearly explain how the SRB is to take into account the 'relative weight of the indicator ['trading activities and off-balance sheet exposures, derivatives, complexity and resolvability']'. The rule is that unclear that the SRB could also have assigned the institutions to two bins or to more than three bins.

168 In addition, the provision grants the SRB the freedom to choose the factors which it deems appropriate to allocate the institutions to different bins, with the result that arbitrary conduct cannot be ruled out.

169 The SRB and the Commission dispute that line of argument.

170 First, it is sufficiently clear from the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 that, in the context of the IPS risk indicator, the SRB is required to assign the institutions to bins by applying a weight that takes account of the risk sub-indicators which make up the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'.

171 Second, it has been stated in paragraphs 68 to 85 above that Article 6(6) and Article 7(4) of Delegated Regulation 2015/63 conferred discretion on the SRB as regards the determination of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' and the weight of the IPS risk indicator.

172 However, as has been found in paragraphs 86 to 97 above, it is clear from Delegated Regulation 2015/63 that the scope of that discretion and the manner of its exercise are defined with sufficient clarity, such that they allow the institutions to foresee with sufficient precision the method of determining the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'.

173 The third part of the fifth plea must therefore be dismissed.

(d) The fourth part, concerning the incompatibility of the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 with the principle that full account must be taken of the facts

174 The applicant submits that the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 breaches the principle that full account must be taken of the facts. The probability of an institution which is a member of an IPS entering resolution cannot be determined solely on the basis of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'. Other key factors which shape the risk profile vis-à-vis the probability of resolution must also be taken into account.

175 The SRB and the Commission dispute that line of argument.

176 Where the applicant relies on the breach of a 'principle that full account must be taken of the facts', that complaint must be understood as a reference to the principle of good administration, as enshrined in Article 41 of the Charter, which requires the institutions and bodies of the European Union to examine carefully and impartially all relevant aspects of the individual case (see, to that effect, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 23 September 2009, *Estonia* v *Commission*, T-263/07, EU:T:2009:351, paragraph 99 and the case-law cited).

177 However, in that regard, the applicant simply claims that, when it adopted Article 7(4) of Delegated Regulation 2015/63, the Commission disregarded certain 'key factors' which can influence the probability of an institution which is a member of an IPS entering resolution, without however specifying what those factors are and why the Commission was obliged to take them into account.

178 The fourth part of the fifth plea must therefore be dismissed.

(e) Conclusion on the fifth plea

179 In the light of the foregoing, the fifth plea must be dismissed.

3. The seventh plea, based on a plea of illegality in respect of Articles 6, 7 and 9 of and Annex I to Delegated Regulation 2015/63 because they infringe a number of higher-ranking rules

180 The applicant submits that Articles 6, 7 and 9 of and Annex I to Delegated Regulation 2015/63 breach the 'principle of the risk-adjusted calculation of the contributions' as well as Articles 16 and 20 of the Charter, the principle of proportionality and the 'principle that full account must be taken of the facts', in so far as those provisions define risk pillars and indicators, and a procedure and formulae applicable to their combination, on the basis of an 'idealised picture which does not reflect the genuine experience and the actual situation of all of the institutions [required to pay *ex ante* contributions adjusted to their risk profile]'.

181 The weight of the risk indicators and their application in Annex I to Delegated Regulation 2015/63 result in the creation of bins and the assignment of different institutions to those bins which result in an objectively unjustified, disproportionate and discriminatory charge for institutions such as the applicant.

182 In particular, as is clear from Annex II to the contested decision, the application of 'Step 2' in Annex I to Delegated Regulation 2015/63 has the result of creating an excessively wide range of values for the first and last bins. For example, in the case of the risk indicator 'risk weighted assets for market risk divided by total assets' – which is part of risk pillar IV – for the part of the *ex ante* contribution calculated on the union base, the applicant, with its value of [*confidential*]%,[1] comes under bin [*confidential*], [*confidential*], and is placed on an equal footing with an institution with a value that is [*confidential*] times higher, namely [*confidential*]%, even though [*confidential*]. The same goes for the part of that risk indicator calculated on the national base as well as for other risk indicators, such as the indicator 'derivatives exposure divided by CET1 capital'.

183 In addition, it is also clear from Annex II to the contested decision that, in the case of six of the nine indicators of risk pillar IV referred to in point (a) of the first subparagraph of Article 6(5) of Delegated Regulation 2015/63, several bins were empty, whereas in each case the first bins contained a very high number of institutions, which is inconsistent with the wording of Annex I to that delegated regulation pursuant to which the SRB must assign the same number of institutions to each bin. This shows that the Commission has created legislation which, when implemented, gives rise to inconsistent results which do not reflect the risk profile of the institutions subject to the *ex ante* contributions.

184 The SRB and the Commission dispute that line of argument.

185 In the first place, it is necessary to examine the compatibility of 'Step 2' in Annex I to Delegated Regulation 2015/63 with the principle of equal treatment, as enshrined in Article 20 of the Charter.

186 In the light of the case-law cited in paragraph 159 above, it is first of all necessary to assess whether those institutions are in a comparable situation.

187 In accordance with 'Step 2' in Annex I to Delegated Regulation 2015/63, it is for the SRB to determine, as a first stage, a number of bins with a view to comparing the institutions in the light of the various risk indicators and sub-indicators. As a second stage, the SRB is to assign, in principle, the same number of institutions to each bin, starting by assigning institutions with the lowest values of the raw indicator to the first bin. As a third stage, the SRB is to assign all of the institutions in a particular bin the same score, called the 'discretized indicator', which it must take into account for the remainder of the calculation of their adjusting multiplier.

188 It cannot be ruled out that the application of that method, referred to as 'binning', as established under 'Step 2' in Annex I to Delegated Regulation 2015/63, may result, in actual fact, in situations in which institutions with values for a particular risk indicator which are close to those of institutions assigned to the preceding bin are however assigned to the next bin, which contains institutions with values for that same risk indicator which might sometimes be considerably higher. This is a result of the application of the rule laid down in point 3 of 'Step 2' in Annex I to Delegated Regulation 2015/63, according to which the SRB is to assign, in principle, the same number of institutions to each bin.

[1] Confidential information omitted.

189 In order to examine whether the institutions assigned to the same bin but which have markedly different values for the same risk indicator are in a comparable situation, account must be taken, in the light of the case-law cited in paragraphs 161 and 162 above, of the objectives of the SRM and, in particular, that of encouraging the institutions to adopt less risky methods of operation.

190 It must be found that, in view of the fact that one of the main objectives of the SRM is to encourage the institutions concerned to adopt less risky models, the institutions assigned to the same bin but which have markedly different values for the same risk indicator are not in comparable situations, since they exhibit different characteristics as regards the degree of risk measured by that indicator.

191 However, as is apparent from paragraph 187 above, those institutions are treated equally, since they are assigned to the same bin related to that risk indicator and, therefore, are assigned the same discretized indicator, which the SRB will take into account to calculate the adjusting multiplier.

192 That said, where persons in different situations are treated equally, the principle of equal treatment is not infringed in so far as such treatment is duly justified (see judgment of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 52 and the case-law cited).

193 That is the case where that treatment relates to a legally permitted objective pursued by the measure having the effect of giving rise to the treatment and is proportionate to that objective (see judgment of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 53 and the case-law cited).

194 In that regard, the Court of Justice has acknowledged the legitimacy of the objective consisting, on the part of an EU institution, in the laying down of general rules which can be easily applied and are easily verified by the competent authorities (see, to that effect, judgments of 24 February 2015, *Sopora*, C-512/13, EU:C:2015:108, paragraph 33, and of 7 March 2017, *RPO*, C-390/15, EU:C:2017:174, paragraph 60).

195 In the present case, it must be stated that Delegated Regulation 2015/63 is consistent with that objective.

196 Delegated Regulation 2015/63 provided for a method of adjustment of the *ex ante* contributions according to the risk profile of the institutions which consists in comparing their risk profiles on the basis of the values obtained by those institutions for a series of risk indicators.

197 The binning method, as described in paragraph 187 above, allows the SRB to manage effectively a large volume of data which it is required to take into account in order to make the comparison mentioned in paragraph 196 above, whilst preventing, in so far as possible, the presence of 'extreme' values, that is to say, values representing a significant departure from the average, from leading to distorted comparisons.

198 As is clear, inter alia, from the JRC technical study relating to Delegated Regulation 2015/63, one of the objectives of the binning method is to provide a simple method for comparing the large volume of data reported by the institutions whose *ex ante* contribution is adjusted to their risk profile. In addition, that method prevents institutions with particularly negative values for certain risk indicators nevertheless receiving a score which points to a low risk profile for that indicator because there are some institutions with extreme values.

199 Next, as regards the proportionality of the binning method in the light of the objective pursued by the legislation at issue, it must be recalled that, as is clear from paragraphs 107 to 111 above, the Commission enjoys broad discretion as regards the application of Article 103(7) of Directive 2014/59.

200 In those circumstances, and in accordance with case-law (see, to this effect, judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraphs 80, 81 and 91; of 30 November 2022, *Trasta Komercbanka and Others* v *ECB*, T-698/16, not published, under appeal, EU:T:2022:737, paragraphs 221 and 222 and the case-law cited; and of 21 December 2022, *Firearms United Network and Others* v *Commission*, T-187/21, not published, under appeal, EU:T:2022:848, paragraphs 122 and 123 and the case-law cited), the Court's review of compliance with the principle of proportionality must be confined to examining whether the binning method is manifestly inappropriate having regard to the objective which the Commission seeks to pursue, whether it manifestly exceeds the limits of what is necessary to achieve that objective, and whether it causes disadvantages disproportionate to the objective pursued.

201 As to whether the binning method enables the objective pursued, as specified in paragraphs 197 and 198 above, to be achieved, it must be observed that that method is a recognised statistical method, as is clear, inter alia, from the JRC technical study. Similarly, that method uses objective criteria to determine the *ex ante* contributions, namely, inter alia, a mathematical formula laid down in point 2 of 'Step 2' in Annex I to Delegated Regulation 2015/63.

202 In addition, the binning method allows the data from a large number of institutions to be compared easily and their *ex ante* contributions to be calculated effectively and objectively.

203 In those circumstances, that method allows the objective pursued to be achieved, namely that of establishing a simple and easily reviewable method of comparing a large volume of data for the purposes of calculating the *ex ante* contributions.

204 Furthermore, the applicant fails to demonstrate that the binning method manifestly exceeds the limits of what is necessary to achieve the objective pursued. Specifically, it has not shown that another method of comparing the institutions' risk profiles would clearly present fewer disadvantages for the institutions than the binning method, whilst enabling that objective to be attained in an equally effective manner.

205 Finally, it is true that, as has been stated in paragraph 188 above, this statistical method could have the result, in actual fact, that in some cases institutions with markedly different values could nevertheless be placed in the same bin, as is apparent from Annex II to the contested decision. However, that fact cannot be regarded as a manifestly disproportionate disadvantage in the light of the objective pursued by the legislation at issue.

206 It must be stated, firstly, that the *ex ante* contributions can be adjusted only within the range of a coefficient of between 0.8 and 1.5, pursuant to Article 9(3) of Delegated Regulation 2015/63. The basic annual contribution thus remains the primary factor in determining the *ex ante* contribution having regard to the risk profile of the institutions.

207 Second, as is clear from the empirical study conducted prior to the adoption of Delegated Regulation 2015/63, the findings of which were summarised in the JRC technical study, the statistical phenomenon identified in paragraphs 188 and 205 is limited because it tends to occur primarily in the last bins, and not in the vast majority of bins.

208 Third, it remains established that the institutions in those last bins have higher values for the risk indicator concerned than the institutions assigned to the lower bins.

209 Fourth, the method of adjusting the *ex ante* contributions to the risk profile takes into account a multitude of risk indicators, as is apparent from Article 6 of Delegated Regulation 2015/63. An institution is thus assigned, ultimately, to a multitude of bins according to its values and those of the other institutions for each risk indicator.

210 As is apparent from the JRC technical study referred to in paragraph 207 above, institutions tend to be placed in other bins for different risk indicators. Accordingly, if an institution is in the last bin for a particular risk indicator, and is thus placed on an equal footing with institutions with considerably higher values, this is generally not the case for other risk indicators, thus allowing a comprehensive comparison of the institutions concerned to be made.

211 In those circumstances, it must be held that the applicant has not shown that Article 20 of the Charter and the principle of proportionality preclude the use of the binning method.

212 Moreover, the phenomenon described in paragraphs 209 and 210 above is illustrated by the calculation of the applicant's *ex ante* contribution for the 2021 contribution period, as is shown by its individual sheet. As far as concerns the part of its *ex ante* contribution calculated on the union base, the applicant is in the [*confidential*] bin for [*confidential*]. However, for none of the risk indicators forming part of the risk pillars [*confidential*] is the applicant in the [*confidential*] bin, even though [*confidential*].

213 The situation is, furthermore, similar for the part of the applicant's *ex ante* contribution which was calculated on the national base. Its individual sheet shows that the applicant is in the [*confidential*] bin for [*confidential*]. It is not, however, in the [*confidential*] bin for any of the risk indicators making up risk pillars [*confidential*].

214 With regard, in the second place, to the complaint alleging breach of a 'principle of the risk-adjusted calculation of the contributions', there is no need to rule on the question of whether such a principle exists in EU law. That complaint can be understood as meaning that the applicant in fact claims that the Commission made a manifest error of assessment when it provided for the binning method, since that method prevents the SRB from making appropriate adjustments to the basic annual contributions in line with the institutions' actual risk profile.

215 However, in the light of the considerations set out in paragraphs 201 to 211 above, the applicant cannot claim that the Commission made a manifest error of assessment when it introduced the binning method.

216 As regards, in the third place, the compatibility of the binning method with Article 16 of the Charter and the principle that full account must be taken of the facts, the applicant does not put forward any independent and targeted line of argument regarding the infringement of that article and that principle, rather it simply relies on their infringement.

217 In that regard, it follows from case-law that, if an action is to be admissible, the essential points of fact and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible, in order to ensure legal certainty and the sound administration of justice. Thus, any plea which is not adequately articulated in the application initiating the proceedings must be held to be inadmissible. Similar requirements apply where a complaint is relied upon in support of a plea. That absolute bar to proceedings must be raised *ex officio* by the EU court (see judgments of 30 June 2021, *Italy* v *Commission*, T-265/19, not published, EU:T:2021:392, paragraph 33 and the case-law cited, and of 7 July 2021, *Bateni* v *Council*, T-455/17, EU:T:2021:411, paragraph 135 and the case-law cited).

218 Since the complaints referred to in paragraph 216 do not satisfy those requirements, they must be dismissed as inadmissible.

219 Lastly, the applicant does not put forward, in its application, any independent and targeted line of argument concerning the alleged unlawfulness of Articles 6, 7 and 9 of Delegated Regulation 2015/63 or of parts of Annex I to that delegated regulation other than that under 'Step 2' which goes beyond the arguments examined above.

220 The plea of illegality regarding the latter provisions must therefore be dismissed.

221 In the light of the foregoing, the seventh plea must be dismissed.

4. The tenth plea in law, based on a plea of illegality in respect of the first and second sentences of Article 20(1) of Delegated Regulation 2015/63 because they infringe Article 103(7) of Directive 2014/59 and breach the 'principle of the risk-adjusted calculation of the contributions'

222 The applicant pleads that the first and second sentences of Article 20(1) of Delegated Regulation 2015/63 are unlawful because, in so far as that provision allows the SRB not to apply, for an unspecified period, in the context of the calculation of the *ex ante* contributions, one or more risk indicators if the data for those indicators are not available, the Commission failed to comply with Article 103(7) of Directive 2014/59, which required it to take into account all of the elements laid down in that provision when adopting Delegated Regulation 2015/63.

223 More specifically, the first and second sentences of Article 20(1) of Delegated Regulation 2015/63 have the effect that, for the 2021 contribution period, the SRB failed to take into account the risk indicator 'own funds and eligible liabilities held by the institution in excess of [the minimum requirement for own funds and eligible liabilities (MREL)]', in the context of the risk pillar 'risk exposure'; the risk indicator 'net stable funding ratio', in the context of the risk pillar 'stability and variety of sources of funding'; and the risk indicators 'complexity' and 'resolvability', in the context of risk pillar IV.

224 For the same reasons, the first and second sentences of Article 20(1) of Delegated Regulation 2015/63 are likewise contrary to the 'principle of the risk-adjusted calculation of the contributions'.

225 The SRB and the Commission dispute that line of argument.

226 As a preliminary point, it must be clarified, first, that, in the context of the tenth plea in law, the applicant simply raises a plea of illegality against Article 20(1) of Delegated Regulation 2015/63.

227 Second, without it being necessary to examine whether Directive 2014/59 or another rule of EU law enshrines a 'principle of the risk-adjusted calculation of the contributions', the applicant's complaint alleging breach of that principle must be understood as meaning that it claims, in essence, that Article 20(1) of Delegated Regulation 2015/63 is vitiated by a manifest error of assessment, because that provision prevents the SRB from making appropriate adjustments to the basic annual contributions in line with the institutions' actual risk profile.

228 Those clarifications being made, it must be noted that, under Article 20(1) of Delegated Regulation 2015/63, entitled 'Transitional provisions', a risk indicator is not to apply until the information required by a specific indicator referred to in Annex II to that delegated regulation is included in the supervisory reporting requirements referred to in Article 14 of the delegated regulation, namely the supervisory reporting requirements laid down by Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation No 575/2013 (OJ 2014 L 191, p. 1) or, where applicable, at Member State level.

229 It must be recalled, in that regard, that Delegated Regulation 2015/63 was adopted on the basis of Article 103(7) of Directive 2014/59, which requires the Commission to take into account all of the elements listed in points (a) to (h) of that provision for the purposes of specifying the notion of 'adjusting contributions in proportion to the risk profile of institutions'.

230 Despite that fact, Article 20(1) of Delegated Regulation 2015/63 authorises the SRB, on a transitional basis, not to apply some of those elements, which are reflected in the risk indicators laid down by that delegated regulation.

231 In that regard, it must be pointed out that, whilst Article 103(7) of Directive 2014/59 does indeed require the Commission to 'take into account' all of the elements listed in points (a) to (h) of Article 103(7) of Directive 2014/59, that provision does not specify how it is to take them into account. To that end, and as has been recalled in paragraphs107 to 111 above, the Commission enjoys broad discretion regarding the application of that provision.

232 Such discretion may entail, where appropriate, the need to provide for transitional periods vis-à-vis the application of the elements listed in Article 103(7)(a) to (h) of Directive 2014/59 because, inter alia, the data needed to calculate the risk indicators based on those elements are not available.

233 Article 20(1) of Delegated Regulation 2015/63 introduces such a transitional period since it does not allow the SRB not to apply some of those elements for an indefinite period, but rather simply on a transitional basis, as is clear from the heading of Article 20 of that delegated regulation and from the conditions for application of paragraph 1 thereof.

234 In addition, it must be pointed out, as the SRB and the Commission observe, that the justification for the transitional period provided for in that provision is closely connected to the gradual nature of the process of establishing the supervisory requirements and the corresponding reporting requirements. As is clear, inter alia, from recital 6 of Directive 2014/59, Delegated Regulation 2015/63 was adopted at a time when those requirements had not yet been definitively adopted or were still the subject of amendments. In that regard, the applicant has not genuinely contested the SRB's claim that the competent authorities are gradually defining some of those requirements which, in turn, influence the data which had to be available in order to calculate the risk indicators laid down in Delegated Regulation 2015/63. It follows that those data necessary for the

calculation of some of those risk indicators could not be available for all the institutions concerned or, at the very least, for all of the institutions which have their registered office in a Member State, for part of the initial period at the very least, it being recalled that those data could not be reported by way of supervisory information under EU law or, as the case may be, under national law.

235 In that context, the purpose of Article 20(1) of Delegated Regulation 2015/63 is to prevent disproportionate or discriminatory charges from being imposed, as the case may be, on institutions when calculating the *ex ante* contributions specifically because of that gradual implementation of the supervisory requirements and the related reporting requirements. That calculation involves a comparative exercise. In that regard, the SRB has explained, in essence, without being contradicted, that, if data essential for the calculation of certain risk indicators were not reported by way of supervisory information by all of the institutions or, at the very least, by all of the institutions which have their registered office in a Member State, the SRB would be obliged to take into account data relating to such indicators which are not comparable.

236 Lastly, it is true that the exception provided for in Article 20(1) of Delegated Regulation 2015/63 may result in a situation in which certain risk indicators provided for in Article 6 of that delegated regulation remain unapplied throughout the initial period. However, first, such an outcome is the result of the gradual nature of the implementation of the supervisory requirements, as set out in paragraph 234 above. Second, as is clear from Article 71 of Regulation No 806/2014, those risk indicators are also applicable beyond the initial period.

237 In those circumstances, and in view of the considerations set out in paragraph 231 above, the applicant has failed to establish that Article 20(1) of Delegated Regulation 2015/63 is vitiated by a manifest error of assessment or a misuse of powers, or that it manifestly exceeds the limits of the broad discretion afforded to the Commission by Article 103(7) of Directive 2014/59.

238 The tenth plea must therefore be dismissed.

B. The pleas in law concerning the lawfulness of the contested decision

1. The first plea in law, alleging infringement of Article 81(1) of Regulation No 806/2014, read together with Article 3 of Regulation No 1

239 It is clear from the documents before the Court that the assessment notice of 21 April 2021 from the BaFin was accompanied by the English-language version of the contested decision, including the annexes thereto, and their free translation into German. According to the assessment notice, only the English-language version of the contested decision is authentic.

240 The applicant claims that the contested decision is contrary to Article 81(1) of Regulation No 806/2014, read together with Article 3 of Regulation No 1, because it states that only the English-language version is authentic, even though the applicant had expressly chosen German as the official language to be applied during the administrative procedure. Since the applicant did not expressly waive its right to communicate with the SRB in German, the fact that the SRB also drafted an unofficial version of the contested decision in German cannot remedy that flaw, especially since there are significant discrepancies between that version and the English-language version of the contested decision.

241 The SRB disputes that line of argument.

242 Under Article 81(1) of Regulation No 806/2014, Regulation No 1 applies to the SRB.

243 It follows from Article 3 of Regulation No 1 that documents sent by institutions and bodies of the European Union to a Member State or to a person subject to the jurisdiction of a Member State must be drafted in the language of that State.

244 However, pursuant to Article 81(4) of Regulation No 806/2014, the SRB may agree with the NRAs on the language in which the documents to be sent to or by them are to be drafted; that provision thus constitutes a special rule as compared with Article 3 of Regulation No 1.

245 The SRB applied Article 81(4) of Regulation No 806/2014 by concluding with the NRAs an agreement concerning the practical arrangements for cooperation within the SRM, which was ratified by Decision SRB/PS/2018/15 of the SRB of 17 December 2018 establishing the framework for the practical arrangements for the cooperation within the SRM between the SRB and NRAs ('the SRB-NRAs agreement').

246 It is therefore necessary to examine whether the contested decision complied with the arrangements laid down in that agreement.

247 Under Article 4(6) of the SRB-NRAs agreement, legal acts of the SRB addressed to the NRAs for their implementation under national law are to be adopted in English, and that language version of such acts is legally binding.

248 In that regard, it follows from Article 5(1) of Implementing Regulation 2015/81 that the SRB is required to communicate its decisions on the calculation of the *ex ante* contributions to the NRAs concerned.

249 In accordance with that provision, the SRB clarified, in Article 2 of the operative part of the contested decision, that that decision is communicated to the German NRA, in its capacity as addressee on the same basis as other NRAs.

250 It follows that the contested decision falls within the scope of Article 4(6) of the SRB-NRAs agreement.

251 In accordance with Article 81(4) of Regulation No 806/2014, the SRB could thus draft the contested decision in English. In those circumstances, the applicant cannot allege that it infringed Article 81(1) of that regulation or Article 3 of Regulation No 1.

252 That conclusion is not invalidated by the applicant's arguments.

253 Firstly, the applicant's argument that it chose to receive documents from the SRB during the administrative stage in German and, therefore, the SRB had to communicate the contested decision to it in that language must be dismissed.

254 Although it is clear from the form produced in Annex A.10 to the application that the applicant did make such a choice, that choice relates solely to the exchange of documents between it and the SRB and cannot cover the decisions concerning *ex ante* contributions, since such decisions are addressed by the SRB to the NRAs.

255 Next, the applicant's argument that it is directly and individually concerned by the contested decision and, therefore, it is entitled to receive an official copy of that decision in German likewise cannot succeed.

256 First, that argument disregards the wording of Article 81(4) of Regulation No 806/2014, read together with Article 5(1) of Implementing Regulation 2015/81 and Article 4(6) of the SRB-NRAs agreement.

257 Second, it follows from case-law that there is no general principle of EU law entitling each person to have every act likely to affect his or her interests drafted in his or her language in all circumstances, and that the EU institutions are required, without any derogation being permissible, to use all the official languages in all situations (see, to that effect, judgment of 26 March 2019, *Spain* v *Parliament*, C-377/16, EU:C:2019:249, paragraph 37 and the case-law cited).

258 The first plea must therefore be dismissed.

2. The second plea, alleging failures to state reasons

259 The second plea is divided into seven parts.

(a) Preliminary observations

260 The second paragraph of Article 296 TFUE provides that legal acts are to state the reasons on which they are based. Similarly, the right to good administration enshrined in Article 41 of the Charter provides that the institutions, bodies, offices and agencies of the European Union are to give reasons for their decisions.

261 The statement of the reasons for a 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 judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 103 and the case-law cited).

262 Such a 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 a 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 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 104 and the case-law cited).

263 In order to examine whether that statement of reasons is sufficient in the case of a decision determining *ex ante* contributions, it must be recalled, first, that it cannot be inferred from the case-law of the Court of Justice 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 (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 105 and the case-law cited).

264 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, 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 judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 109 and the case-law cited).

265 Third, to take the view that the statement of reasons for the SRB's decision determining the *ex ante* contributions must necessarily enable the institutions to verify the accuracy of the calculation of their *ex ante* contribution 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 the 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 (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 118).

266 Fourth, although it follows from the foregoing that the SRB's duty 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 judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 120).

267 However, it cannot be held, when weighing the duty 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 (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 121).

268 As far as concerns the SRB's decision fixing the *ex ante* contributions, the duty to state reasons must be regarded as fulfilled where the persons concerned by that decision, 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, relative to the situation of all the other

financial institutions concerned (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 122).

269 In such a case, the persons concerned are in a position to verify whether their *ex ante* contribution 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 can therefore understand the reasons for the decision calculating their *ex ante* contribution 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 is based (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 123).

270 It follows from the foregoing that the SRB is not, inter alia, required to provide an institution with data enabling it to verify fully the accuracy of the value of the adjusting multiplier, since that verification would require data which are business secrets relating to the economic situation of each of the other institutions concerned (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 135).

271 However, it is for the SRB to publish or disclose to the institutions concerned, in collective and anonymised form, the information relating to those institutions which was used to calculate that contribution, in so far as that information may be communicated without compromising business secrets (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 166).

272 That information which must thus be made available to the institutions includes, in particular, the limit values of each bin and those of the relevant indicators, on the basis of which the institutions' *ex ante* contribution was adjusted to their risk profile (see, to that effect, judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 167).

273 It is in the light of those considerations that the arguments put forward by the applicant in the context of the second plea must be examined.

(b) The first part, concerning the language of the authentic version of the contested decision

274 The applicant submits that the contested decision does not exist in a language expressly chosen by it pursuant to Article 81(1) of Regulation No 806/2014, namely German. In addition, there are discrepancies on key points between the English-language version of the contested decision, which is the authentic version, and its German translation.

275 The SRB disputes that line of argument.

276 As regards, first, the complaint alleging that the contested decision does not exist in the language chosen by the applicant, that complaint overlaps, in essence, with the first plea, and it must therefore be rejected on the grounds set out in paragraphs 242 to 257 above. As for, second, the complaint alleging discrepancies between the language versions of that decision, the applicant identifies only one paragraph of the decision in which the authentic English-language version

diverges from its German translation, namely recital 114 thereof concerning the creation of three bins relating to the IPS risk indicator. Assuming that such a linguistic discrepancy does exist, the applicant fails to explain how that discrepancy prevented it from understanding the reasons why the SRB created three bins relating to the IPS risk indicator.

277 The first part of the second plea must therefore be dismissed.

(c) The second part, concerning the complexity of the statement of reasons for the calculation of the ex ante *contribution*

278 The applicant claims, first of all, that the explanations provided by the SRB in the contested decision, which are split across four separate documents, are excessively complex and opaque.

279 Next, the calculation tool used by the SRB to calculate the *ex ante* contributions is not accessible to the applicant or to the Court.

280 Finally, the defects in the statement of reasons for the contested decision are further confirmed by the fact that the SRB expanded the statement of reasons for the decision setting the *ex ante* contributions for the 2022 contribution period.

281 The SRB disputes that line of argument.

282 First of all, the applicant does not explain to the requisite legal standard how the fact that the contested decision is split over four documents makes that decision incomprehensible and therefore constitutes a defect in the statement of reasons.

283 Similarly, although the applicant alleges that the documents making up the contested decision are interlinked by a good many references and cross-references such that is impossible to understand fully each of the elements of the calculation, it does not provide any example of such an element which is rendered incomprehensible for that reason.

284 As regards, next, the calculation tool used by the SRB to calculate the *ex ante* contributions, it must be recalled that the applicant's complaint concerns, according to the clarifications provided at the hearing, the calculation tool in the form of software used internally by the SRB to calculate the *ex ante* contributions for the 2021 contribution period of all of the institutions.

285 The applicant cannot criticise the SRB for not having given it access to such a tool, since it has not presented to the Court any specific evidence which would explain the reasons why that access was needed in order to comply with the requirements resulting from the case-law cited in paragraphs 268, 271 and 272 above.

286 Finally, the mere fact that the SRB allegedly expanded the statement of reasons for the decision setting the *ex ante* contributions for the 2022 contribution period is irrelevant to assessing whether adequate reasons are stated for the contested decision. The statement of reasons for the contested decision cannot be examined in the light of the reasons stated for an act adopted almost a year after the contested decision.

287 In the light of the foregoing, the second part of the second plea must be dismissed.

(d) The sixth part, concerning the retention of the data of the other institutions

288 According to the applicant, the statement of reasons for the contested decision is insufficient because the SRB did not disclose the data of the other institutions which formed the basis of the calculation of the *ex ante* contributions, which leaves the applicant uncertain as to the accuracy of the calculation of its *ex ante* contribution. Thus, the SRB did not strike a fair balance between the duty to state reasons and the protection of business secrets.

289 The SRB disputes that line of argument.

290 In recital 88 of the contested decision, the SRB noted that 'institutions' business secrets – namely, all information about the institutions' business activity that, in the case of disclosure to a competitor and/or wider public, could significantly harm the institutions' interests – [were] considered to be confidential information'. It added that, 'in the context of the calculation of ex-ante contributions …, the individual information submitted by the institutions via their [reporting] forms …, which [were] then relied on for calculating their ex-ante contributions, [were] considered to be business secrets'.

291 In addition, in recitals 90 to 92 of the contested decision, the SRB stated that it was prohibited from 'disclosing the institutions' individual data points, which [were] at the basis of the calculations in [that] decision', whereas it was authorised to 'disclose the institutions' aggregated and common data points, as that data [was] in collective form'. That being the case, the institutions had, according to the contested decision, 'complete transparency as to the calculation of their [basic annual contribution] and individual risk-adjustment multipliers' for the steps involved in calculating that contribution, as they were defined in Annex I to Delegated Regulation 2015/63, and which related to the 'calculation of the raw indicators' (Step 1), the 'rescaling of the indicators' (Step 3) and the 'calculation of the composite indicator' (Step 5). In addition, the institutions were able to obtain 'common data points which the [SRB] uses for all risk-adjusted institutions equally' for the steps in the calculation relating to the 'discretization of the indicators' (Step 2), the 'inclusion of the assigned sign' (Step 4) and the 'calculation of the annual contributions' (Step 6).

292 In that regard, it must be recalled, in the first place, that the very principle of the method of calculating *ex ante* contributions, as set out in Directive 2014/59 and Regulation No 806/2014, means that the SRB must use data which are business secrets and cannot be included in the statement of reasons for the decision setting the *ex ante* contributions (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 114).

293 In the second place, contrary to what the applicant claims, the duty to state reasons does not require the SRB to include, in the contested decision, detailed considerations demonstrating the confidentiality of each category of data provided by the institutions.

294 As is clear from the case-law cited in paragraph 262 above, it is not necessary for the reasoning for an act to go into all the relevant facts and points of law, since the question whether a 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.

295 However, first, it follows from the considerations contained in recital 88 of the contested decision that the SRB took the view that all of the data reported by each institution, in their entirety, constituted business secrets, since the disclosure of those data to a competitor or to a wider public could significantly harm the interests of the institution concerned.

296 Second, since the applicant provided its own data for the purposes of the calculation of the *ex ante* contributions, in accordance with Article 14 of Delegated Regulation 2015/63, it was fully aware of the nature and the general features of each category of those data. It was thus able, inter alia, to assess to what extent each of those categories of data could contain confidential information.

297 In those circumstances, the applicant had sufficient information to understand and, if necessary, contest the reasons why the SRB had taken the view that the individual data of the other institutions were business secrets. It could, inter alia, contest, having regard to the nature and the general features of each category of those data, the SRB's assessment contained in recital 88 of the contested decision that those data were secret and their disclosure could significantly harm the interests of the institution concerned. It thus had all the information needed to be able to challenge the SRB's non-compliance with the requirements identified by the Court of Justice as regards balancing the duty to state reasons with the principle of the protection of business secrets, as recalled in paragraphs 268, 271 and 272 above.

298 The applicant has not, however, adduced any evidence seeking to call into question the SRB's assessment that the individual data of the other institutions constituted business secrets.

299 In the light of the foregoing, the applicant cannot claim that inadequate reasons are stated for the contested decision because that decision does not provide the individual data of the other institutions which would enable the calculation of its *ex ante* contribution to be verified.

300 That conclusion is not called into question by the applicant's argument that, in order to discharge its duty to state reasons, the SRB must provide it, in anonymised form, with a list of all of the data of the establishments contained in the same bin as it.

301 First, to impose such a requirement on the SRB would go beyond the requirements imposed by the case-law recalled in paragraphs 268, 271 and 272 above.

302 Second, the SRB has argued, without being seriously contradicted on this point, that even a list including anonymised data for a particular bin would risk allowing economic operators active in the banking sector, who are prudent traders, learning the business secrets of certain institutions. In that regard, the applicant has not, in particular, disputed that such traders knew which institutions tended to have high values for certain risk indicators. If they were to obtain lists containing such data each year, they could track the evolution of the risk indicators of those institutions, even though those indicators are composed of commercially sensitive data. Such a risk exists in particular in the case of large institutions and institutions established in Member States in which there are a limited number of institutions liable to the *ex ante* contribution. It cannot be ruled that, in such situations, a prudent trader may be able to identify those institutions, even though they have been anonymised. Thus, the SRB cannot be criticised for not having drawn up a list of all of the anonymised data of the institutions assigned to the same bin.

303 In the light of the foregoing, the sixth part of the second plea must be dismissed.

(e) The third part, concerning the reasons stated for the annual target level

304 According to the applicant, the reasons for the determination of the annual target level are not duly stated in the contested decision. In particular, the SRB should have explained to what extent it had taken account of the potential impact of pro-cyclical contributions on the financial position of the institutions concerned. In addition, the SRB failed to communicate the forecasted annual target level or its interpretation of the cap mentioned in the second subparagraph of Article 70(2) of Regulation No 806/2014. As the decision fixing the *ex ante* contributions for the 2022 contribution period shows, the SRB takes the view that it is authorised to increase the annual target level at its discretion by applying a coefficient which is not provided for in the applicable legislation and, in so doing, impose a disproportionate charge on the institutions.

305 In response, the SRB contends that it is clear from recitals 35 to 48 of the contested decision that it complied with its duty to state reasons as regards the determination of the annual target level for the 2021 contribution period.

306 Specifically, it is apparent from recitals 43 to 48 of the contested decision that the SRB took account of the COVID-19 pandemic as part of the analysis of the phase of the business cycle and of the potential pro-cyclical impact of the contributions on the financial position of the contributing institutions. In that regard, the SRB explained that it expected an economic rebound in the course of 2021, even though that rebound remained difficult to predict.

307 Furthermore, the SRB published the forecasted final target level on its website and the applicant was aware of its publication. The alleged failure to disclose the SRB's interpretation vis-à-vis the 12.5% cap provided for in Article 70(2) of Regulation No 806/2014 cannot affect the legality of the statement of reasons for the contested decision.

308 As a preliminary point, it must be recalled that, in accordance with Article 69(1) of Regulation No 806/2014, by the end of the initial period, the available financial means in the SRF must reach the final target level, which corresponds to at least 1% of the amount of covered deposits of all institutions authorised in all of the participating Member States.

309 Under Article 69(2) of Regulation No 806/2014, during the initial period, the *ex ante* contributions must be spread out in time as evenly as possible until the final target level mentioned in paragraph 308 above is reached, but with due account of the phase of the business cycle and the impact that pro-cyclical contributions may have on the financial position of the institutions.

310 Article 70(2) of Regulation No 806/2014 states that, each year, the contributions due by all of the institutions authorised in the territories of all of the participating Member States are not to exceed 12.5% of the final target level.

311 In relation to the method of calculation of the *ex ante* contributions, Article 4(2) of Delegated Regulation 2015/63 provides that the SRB is to determine their amount on the basis of the annual target level, taking into account the final target level, and on the basis of the average amount of covered deposits in the previous year, calculated quarterly, of all of the institutions authorised in the territories of all of the participating Member States.

312 Similarly, under Article 4 of Implementing Regulation 2015/81, the SRB is to calculate the *ex ante* contribution for each institution on the basis of the annual target level, which must be established having regard to the final target level and in accordance with the methodology set out in Delegated Regulation 2015/63.

313 In the present case, as is apparent from recital 48 of the contested decision, the SRB set the amount of the annual target level at EUR 11 287 677 212.56 for the 2021 contribution period.

314 In recitals 36 and 37 of the contested decision, the SRB explained, in essence, that the annual target level was to be determined on the basis of an analysis of the evolution of covered deposits in previous years, any relevant development in the economic situation and an analysis of the indicators related to the phase of the business cycle and the impact that pro-cyclical contributions might have on the financial position of the institutions. Thereafter, the SRB deemed it appropriate to determine a coefficient based on that analysis and on the financial means available in the SRF ('the coefficient'). The SRB applied that coefficient to one eighth of the average amount of covered deposits in 2020, in order to obtain the annual target level.

315 The SRB set out the approach followed to determine the coefficient in recitals 38 to 47 of the contested decision.

316 In recital 38 of the contested decision, the SRB found there to be a constant growth trend in covered deposits for all institutions in the participating Member States. Specifically, the average amount of those deposits, calculated quarterly, amounted to EUR 6.689 trillion in 2020.

317 In recitals 40 and 41 of the contested decision, the SRB presented the forecasted evolution of covered deposits for the three remaining years of the initial period, namely from 2021 to 2023. It estimated that the annual growth rates of covered deposits until the end of the initial period would range between 4% and 7%.

318 In recitals 42 to 45 of the contested decision, the SRB presented an assessment of the phase of the business cycle and of the potential pro-cyclical impact the *ex ante* contributions might have on the financial position of the institutions. To that end, it stated that it had taken into account a number of indicators, such as the Commission's GDP growth forecast and the ECB's projections in that regard or the private-sector credit flow as a percentage of GDP.

319 In recital 46 of the contested decision, the SRB concluded that, while it was reasonable to expect a further growth of covered deposits in the Banking Union, the pace of that growth would be lower than in 2020. In that regard, the SRB stated, in recital 47 of the contested decision, that it had adopted a 'conservative approach' as far as concerned the growth rates of covered deposits in the coming years until 2023.

320 In the light of those considerations, in recital 48 of the contested decision, the SRB set the value of the coefficient at 1.35%. It then calculated the amount of the annual target level by multiplying the average amount of the covered deposits in 2020 by that coefficient and dividing the result of that calculation by eight, in accordance with the following mathematical formula contained in recital 48 of that decision:

'$Target_0$ [amount of the annual target level] = Total covered $deposits_{2020}$ * 0.0135 * ⅛ = EUR 11 287 677 212.56'.

321 However, at the hearing, the SRB stated that it had determined the annual target level for the 2021 contribution period as follows.

322 First, on the basis of a prospective analysis, the SRB determined the amount of the covered deposits of all of the institutions authorised in the territories of all of the participating Member States, as forecasted for the end of the initial period, at approximately EUR 7.5 trillion. In arriving at that amount, the SRB took into account the average amount of covered deposits in 2020, that is to say, EUR 6.689 trillion, an annual growth rate of covered deposits of 4% and the number of contribution periods remaining until the end of the initial period, namely three.

323 Second, in accordance with Article 69(1) of Regulation No 806/2014, the SRB calculated 1% of those EUR 7.5 trillion to obtain the estimated amount of the final target value to be reached on 31 December 2023, namely approximately EUR 75 billion.

324 Third, the SRB deducted from the latter amount the financial means already available in the SRF in 2021, that is to say approximately EUR 42 billion, to obtain the amount still to be collected over the remaining contribution periods before the end of the initial period, namely from 2021 to 2023. That amount stood at approximately EUR 33 billion.

325 Fourth, the SRB divided the latter amount by three to spread it evenly over those three remaining contribution periods. The annual target level for the 2021 contribution period was thus set at the amount stated in paragraph 313 above, that is to say, approximately EUR 11.287 billion.

326 The SRB also stated at the hearing that it had made public the data which had formed the basis for the method described in paragraphs 322 to 325 above and which allowed the applicant to understand the method by which the annual target level had been determined. In particular, it explained that, in May 2021, that is to say, after the adoption of the contested decision but before the present action was brought, it had published on its website a fact sheet titled 'Fact Sheet 2021' ('the fact sheet'), which stated the estimated amount of the final target level. Similarly, the SRB asserted that the amount of the available financial means in the SRF could also be found on its website and via other public sources well before the contested decision was adopted.

327 In order to examine whether the SRB complied with its duty to state reasons as regards the determination of the annual target level, it must be recalled first of all that an absence of or an inadequate statement of reasons is a plea involving a matter of public policy which may, and even must, be raised by the EU judicature of its own motion (see judgment of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 34 and the case-law cited). Accordingly, the Court may, or even must, also take into account failures to state reasons other than those upon which the applicant relies, in particular where those failures come to light in the course of the procedure.

328 To that end, the parties' arguments were heard, in the course of the oral part of the procedure, concerning any failures to state reasons which would vitiate the contested decision as regards the determination of the annual target value. In particular, in response to a number of questions expressly put in that regard, the SRB described, step by step, the methodology which it had actually adopted in order to determine the annual target level for the 2021 contribution period, as set out in paragraphs 321 to 325 above.

329 Next, as regards the content of the duty to state reasons, it follows from case-law that the statement of reasons for a decision adopted by an EU institution or body must, inter alia, not contain contradictions, so that the addressees are able to know the real reasons for that decision, with a view to defending their rights before the court with jurisdiction, and so that the court can exercise its power of review (see, to that effect, judgments of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 169 and the case-law cited; of 22 September 2005, *Suproco* v *Commission*, T-101/03, EU:T:2005:336, paragraphs 20 and 45 to 47; and of 16 December 2015, *Greece* v *Commission*, T-241/13, EU:T:2015:982, paragraph 56).

330 Similarly, where the author of the contested decision provides certain explanations concerning the reasons for that decision in the course of the procedure before the Courts of the European Union, those explanations must be consistent with the considerations set out in the decision (see, to that effect, judgments of 22 September 2005, *Suproco* v *Commission*, T-101/03, EU:T:2005:336, paragraphs 45 to 47, and of 13 December 2016, *Printeos and Others* v *Commission*, T-95/15, EU:T:2016:722, paragraphs 54 and 55).

331 If the considerations set out in the contested decision are not consistent with such explanations provided in the course of the judicial proceedings, the statement of reasons for the decision concerned does not perform the functions identified in paragraphs 261 and 262 above. In particular, such inconsistency prevents the persons concerned from knowing the real reasons for the contested decision, before an action is brought, and from preparing their defence in that regard, and also prevents the Courts of the European Union from identifying the reasons which served as the actual legal basis for that decision and from examining the compatibility of those reasons with the applicable rules.

332 Finally, it must be recalled that, when the SRB adopts a decision setting the *ex ante* contributions, it must inform the institutions concerned of the method of calculation of those contributions (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 122).

333 The same must apply to the method of determining the annual target level, as that amount is of critical importance in the scheme of such a decision. As is clear from Article 4 of Implementing Regulation 2015/81, the method of calculation of the *ex ante* contributions consists in apportioning that amount between all of the institutions concerned, with the result that an increase or a reduction in the amount means a corresponding increase or reduction in the *ex ante* contribution of each of those institutions.

334 It follows from the foregoing that, where the SRB is required to provide the institutions, by means of the contested decision, with explanations concerning the method of determining the annual target level, those explanations must be consistent with the explanations provided by the SRB during the judicial proceedings relating to the methodology actually applied.

335 That is not however the case here.

336 It must be observed, first of all, that recital 48 of the contested decision set out a mathematical formula which was presented as forming the basis for the determination of the annual target level. However, it appears that that formula does not incorporate the components of the methodology actually applied by the SRB, as explained at the hearing. As is clear from paragraphs 322 to 325 above, the SRB obtained the amount of the annual target level, using that

methodology, by deducting from the final target level the available financial means in the SRF, with a view to calculating the amount still to be collected until the end of initial period and dividing the latter result by three. However, those two steps of the calculation are not expressed in the mathematical formula.

337 It is true that it follows from the applicant's arguments, in the context of this plea, that the applicant was aware of the fact sheet and, accordingly, of any amounts of the final target level stated within the range included in that fact sheet. However, even if it also knew the amount of the available financial means in the SRF, those facts alone did not mean that it understood that the two operations referred to in paragraph 336 above had actually been applied by the SRB, bearing in mind, moreover, that the mathematical formula laid down in recital 48 of the contested decision did not even mention them.

338 Similar inconsistencies also affect the way in which the coefficient of 1.35% was determined, despite the fact that it plays a crucial role in the mathematical formula mentioned in paragraph 337 above. That coefficient could be understood as meaning that it is based, amongst other parameters, on the forecasted growth in covered deposits over the remaining years of the initial period. However, as the SRB acknowledged at the hearing, that coefficient was determined so as to be able to justify the result of the calculation of the amount of the annual target level, that is to say, after the SRB calculated that amount by following the four steps set out in paragraphs 322 to 325 above and, in particular, by the division by three of the amount obtained from deducting the available financial means in the SRF from the final target level. No reference to those steps is made in the contested decision.

339 In addition, it must be recalled that, according to the fact sheet, the amount of the estimated final target level was in the range of EUR 70 billion to EUR 75 billion. However, that range appears to be inconsistent with the range of the growth rate of covered deposits of between 4% and 7% indicated in recital 41 of the contested decision. The SRB stated at the hearing that, for the purposes of determining the annual target level, it had taken into account a growth rate of covered deposits of 4% – the lowest rate in the second range – and that it had thus arrived at an estimated final target level of EUR 75 billion – the highest value in the first range. There thus appears to be some inconsistency between those two ranges. On the one hand, the range relating to the rate of evolution in covered deposits also includes values higher than the rate of 4%, the application of which would have resulted in an estimated amount of the final target level greater than those included within the range for that target level. On the other hand, it is impossible for the applicant to understand why the SRB included within the range related to that target level amounts lower than EUR 75 billion. To arrive at such amounts, a rate of below 4% would have to have been applied, but no such rate is included in the range relating to the growth rate of covered deposits. In those circumstances, the applicant was unable to determine how the SRB had used the range relating to the rate of evolution of such deposits to arrive at the calculation of the estimated final target value.

340 It follows that, as far as concerns the determination of the annual target level, the methodology actually applied by the SRB, as explained at the hearing, does not correspond to that described in the contested decision, and therefore the real reasons in the light of which that target level was set could not be identified on the basis of the contested decision either by the institutions or by the Court.

341 In the light of the foregoing, the contested decision must be found to be vitiated by defects in the statement of reasons as regards the determination of the annual target value.

342 The third part of the second plea must therefore be upheld. In view of the legal and economic implications of the present case, it is however in the interests of the proper administration of justice for the other pleas in law raised in the action to be examined.

(f) The fourth part, concerning an insufficient statement of reasons for the basic annual contribution

343 The applicant claims that the SRB did not explain all the specific elements of the calculation of the basic annual contribution as far as the applicant is concerned. The individual sheet does not contain, in particular, the denominator to be applied to that contribution, namely the aggregate net liabilities of all of the institutions concerned, as adjusted in accordance with Article 5 of Delegated Regulation 2015/63, or the 'amount … of the applicant's basic contribution after the formula set out in the [contested] decision has been applied'.

344 The SRB disputes that line of argument.

345 As a preliminary point, it must be recalled that, in the case of institutions required to pay an *ex ante* contribution adjusted in line with their risk profiles, that contribution is calculated, in essence, in two stages.

346 In the first stage, the SRB calculates a basic annual contribution in proportion to the net liabilities of the institution concerned, in accordance with Article 70(1) of Regulation No 806/2014 and Article 103(2) of Directive 2014/59. Pursuant to Article 5 of Delegated Regulation 2015/63, certain liabilities are deducted from those net liabilities.

347 In the second stage, the SRB adjusts the basic annual contribution in line with the risk profile of the institution concerned, in accordance with point (b) of the second subparagraph of Article 70(2) of Regulation No 806/2014 and the second subparagraph of Article 103(2) of Directive 2014/59.

348 The fourth part of the second plea is concerned with the first stage in the calculation of the *ex ante* contributions.

349 In recitals 62 to 65 of the contested decision, the SRB explained the method of determining the numerator and the denominator which serve as a basis for that calculation.

350 Furthermore, on page 1 of the individual file, the SRB set out, under the heading 'Basic Annual Contribution (BAC): numerator', the value of the numerator which had been taken into account to calculate the applicant's basic annual contribution as well as the data on the basis of which that contribution had been calculated.

351 Moreover, on page 2 of the individual form, under the heading 'Calculation of gross contribution ([Delegated Regulation 2015/63], Annex I, 'Step 6')', the contested decision set out the value of the denominator which had been taken into account for that calculation.

352 It follows that the applicant had sufficient information to understand, in essence, how its individual situation had been taken into account, in accordance with the case-law cited in paragraph 268 above.

353 It is true that the SRB did not break down, in the body of the contested decision or in the annexes to that decision, the denominator of the basic annual contribution into its component elements, namely the aggregate net liabilities of all of the institutions concerned, as adjusted in accordance with Article 5 of Delegated Regulation 2015/63.

354 However, as the applicant conceded at the hearing, those elements include the individualised data of all of the institutions concerned.

355 In addition, such elements do not appear necessary for the applicant to be able to understand, in essence, how its individual situation was taken into account, for the purposes of calculating its *ex ante* contribution, in the light of the situation of all of the other institutions concerned.

356 Accordingly, to impose on the SRB a requirement to communicate those elements would go beyond the requirements provided for in the case-law cited in paragraphs 268, 271 and 272 above.

357 The fourth part of the second plea must therefore be rejected.

(g) The fifth part, concerning the insufficient statement of reasons for the risk adjustment of the annual basic contribution

358 The fifth part of the second plea is divided, in essence, into three complaints.

(1) The first complaint, concerning the impossibility of verifying that all of the institutions concerned are subject to a contribution adjusted in proportion to their risk profile

359 According to the applicant, it is impossible to verify whether all of the institutions were in fact subject to a risk adjustment, since there is a discrepancy between, on the one hand, the number of institutions which appears in the statistics published on the SRB's website and, on the other hand, the number of institutions stated in the fact sheet.

360 The SRB disputes that line of argument.

361 First of all, it must be pointed out that, in accordance with Article 9(1) of Delegated Regulation 2015/63, the SRB is to determine the adjusting multiplier for all of the institutions, except for those eligible for payment of a lump-sum contribution pursuant to Article 10 of that delegated regulation and those referred to in Article 11 of that delegated regulation, by combining the risk indicators referred to in Article 6 of Delegated Regulation 2015/63 in accordance with the mathematical formula and the procedures set out in Annex I to that delegated regulation.

362 Next, in so far as the applicant's argument should be understood as meaning that it criticises the SRB for having failed to identify in the contested decision, by name, all of the institutions participating in the SRM whose *ex ante* contribution had been adjusted to their risk profile, it must be observed that the applicant has not submitted to the Court any evidence on the basis of which it could be concluded that that information was relevant to understanding how account had been taken of its individual situation for the purposes of calculating its *ex ante* contribution, in the light of the situation of all of the other institutions concerned, in accordance with the case-law cited in paragraph 268 above.

363 Lastly, in so far as the applicant's argument should be understood as requiring that the SRB communicate simply the number of institutions whose *ex ante* contribution had been adjusted in proportion to their risk profile for the 2021 contribution period, it must be stated that Annex II to the contested decision allows the number of such institutions to be determined. As regards the part of the *ex ante* contributions calculated on the national base, that number can be ascertained, for each Member State, in row 'N' on pages 6 to 131 of Annex II to the contested decision. The same goes for the part of the *ex ante* contributions calculated on the union base, the statistics for which are set out on pages 132 to 137 of Annex II to that decision. It is thus clear from those statistics that, for the 2021 contribution period, a total of 1 627 institutions were subject to an *ex ante* contribution adjusted to their risk profile.

364 In the light of the foregoing, the first complaint of the fifth part of the second plea must be dismissed.

(2) The second complaint, concerning the account taken of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'

365 The applicant submits that the SRB did not a provide a sufficient statement of reasons vis-à-vis the determination of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability', by failing to set out, in particular, its analysis of the elements which resulted in the risk profile of the institutions being increased and which were listed in Article 6(6)(a)(i) to (iv) of Delegated Regulation 2015/63. The SRB did, however, set out such an analysis for the elements which led to the risk profile of the institutions being decreased and which were defined in Article 6(6)(b)(i) and (ii) of that delegated regulation.

366 The SRB disputes that line of argument.

367 It must be stated, in the first place, that the sub-indicators relating to the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' are determined by the SRB in accordance with the conditions laid down in Article 6(6) of Delegated Regulation 2015/63.

368 In the second place, in recitals 98 to 100 of the contested decision, the SRB explained how it had determined the sub-indicators of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'. The SRB included in those recitals, inter alia, a list of the sub-indicators, accompanied by their definitions, and explained, first, the specific data which made up those sub-indicators and, second, how it had weighted those sub-indicators for the purposes of calculating that risk pillar.

369 Such a statement of reasons enables the applicant to understand how the SRB applied the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' and thus satisfies the requirements set out in the case-law cited in paragraphs 268, 271 and 272 above.

370 In the light of the foregoing, the second complaint of the fifth part of the second plea must be rejected.

(3) The third complaint, concerning the statement of reasons for Steps 1 to 6 of the adjustment of the basic annual contribution to the applicant's risk profile

371 The applicant submits that the statement of reasons for Steps 1 to 6 of the adjustment of the basic annual contribution to its risk profile, as described in the individual form, is insufficient.

372 The SRB disputes that line of argument.

373 In order to assess this complaint, it is necessary to examine whether the method of calculation used by the SRB and sufficient information were available to the applicant for it to understand, in essence, how its individual situation had been taken into account, for the purposes of calculating its *ex ante* contribution, having regard to the situation of all of the other institutions concerned, over the different steps involved in that calculation, as defined in Annex I to Delegated Regulation 2015/63.

(i) Step 1

374 In Step 1, the SRB calculates, for each risk indicator and sub-indicator, the 'raw indicator'. In the case of the first three risk pillars, the raw indicator is calculated on the basis of the definitions and operations set out in the table reproduced under 'Step 1' in Annex I to Delegated Regulation 2015/63. As for risk pillar IV, the raw indicator is calculated on the basis of the definitions and operations set out in recitals 98 to 101 of the contested decision. All of the raw indicators are calculated taking into account the information provided by each institution. Those raw indicators, as applied by the SRB for the purposes of calculating the *ex ante* contribution of each institution, were then reproduced in the individual form.

375 Since the individual form was communicated to the applicant, the latter had sufficient information to be able to verify, in essence, the calculation of the raw indicators related to it.

376 That conclusion is not called into question by the applicant's argument that the SRB failed to indicate, in the context of the risk pillar 'importance of an institution to the stability of the financial system or economy', the denominator for the calculation of the risk indicator 'share of interbank loans and deposits in the European Union', as contained in the seventh row of 'Step 1' in Annex I to Delegated Regulation 2015/63.

377 In that regard, the applicant has not presented to the Court any evidence to explain how knowledge of such information would have enabled it to understand, in essence, how its individual situation had been taken into account, for the purposes of calculating its *ex ante* contribution, having regard to the situation of all of the other institutions concerned. In the case of that risk indicator, the applicant can verify its position as compared with the other institutions by taking as a basis its own share of interbank loans and deposits, as stated in sections 4C6 and 4C7, under the heading 'Other input values used in the calculation', on page 3 of the individual form. It can then compare that value with the limit values of the bin to which it was assigned for that risk indicator; it is informed of those limit values on page 31 (in relation to the national base) and page 133 (in relation to the union base) of Annex II to the contested decision.

378 In addition, and in any case, the applicant could ascertain the amount of the denominator of the formula which the SRB had used to calculate that risk indicator, that is to say, the sum of all of the interbank loans and deposits held by the institutions in each Member State or in the Banking

Union, by multiplying the total number of institutions (*N*) by the average value of that indicator (*Moy.* ($\bar{x}$)). The data required to perform that multiplication can also be found on pages 31 and 133 of Annex II to the contested decision.

(ii) Step 2

379 In Step 2, for each raw indicator calculated in Step 1 for each of the risk indicators and sub-indicators, except for the indicator 'extent of previous extraordinary public financial support', the SRB performs the following operations. As a first stage, it determines a number of bins for the purpose of comparing the raw indicators of the institutions. In a second stage, the SRB assigns the same number of institutions to each bin, starting by assigning the institutions with the lowest values of the raw indicator to the first bin. In this way, each bin has limit values, which are determined by the lowest raw indicator and the highest raw indicator. As a third stage, the SRB assigns to all of the institutions contained in a given bin the 'discretized indicator' for that bin ($I_{ij,n}$), which represents the value of the order of that bin, counting from the left to the right, so that the discretized indicator is defined as equal to 1, 2, 3 etc. up until the number of the last bin.

380 As regards, in the first place, the calculation of the number of bins, that calculation is based on the mathematical formula provided for in point 2 of 'Step 2' in Annex I to Delegated Regulation 2015/63. That formula is composed of the following three elements:

– the number of institutions contributing to the SRF (*N*);

– the value σ_g, which is calculated on the basis of that number of institutions (*N*);

– the value g_{ij}, which is calculated on the basis of that same number of institutions (*N*), the average of the raw indicators in question ($\bar{x}$) and the raw indicators of each institution ($x_{i,j}$).

381 As is clear from paragraph 363 above, the applicant was able to ascertain the number of institutions (*N*) contributing to the SRF.

382 Furthermore, the SRB communicated, on pages 30 to 34 and 132 to 136 of Annex II to the contested decision, the values g_{ij} and σ_g as well as the average of the raw indicators $\bar{x}$ for each risk indicator and sub-indicator.

383 Finally, it is clear from the considerations set out in paragraphs 292 to 302 above that the SRB was not obliged to communicate to the institutions the raw indicators of all of the other institutions concerned.

384 Accordingly, as far as concerns the calculation of the number of bins, the SRB provided the institutions with the greatest transparency, within the limits imposed by its obligation to observe the confidentiality of their business secrets, and therefore the applicant had sufficient information to understand, in essence, how the SRB had made that calculation.

385 In the second place, the applicant had access to the minimum and maximum values of each bin, for each of the risk indicators or sub-indicators, because they were included on pages 30 to 34 and 132 to 136 of Annex II to the contested decision. In addition, it was aware of the raw indicators which had been used by the SRB to calculate its *ex ante* contribution, since those

indicators are stated in its individual form. The applicant could thus verify whether the raw indicators which had been attributed to it fell within the minimum and maximum values of the bins to which it had been assigned.

386 In the third place, the applicants can determine, from the individual form, the discretized indicator assigned to them for a particular risk indicator or sub-indicator.

387 In those circumstances, the applicant had sufficient information to understand, in essence, the operations performed in the course of Step 2.

388 That conclusion is not called into question by the applicant's arguments.

389 The applicant submits, first of all, that, in the context of the application of point 3 of 'Step 2' in Annex I to Delegated Regulation 2015/63, it is impossible to determine whether institutions with the same raw indicator were indeed assigned to the same bin. Thus, the SRB should have provided a classification list of all of the institutions, so that the applicant can verify whether their allocation to the different bins was correct. Furthermore, since the contested decision does not contain details relating to the third stage of Step 2, namely the assignment of the discretized indicator to the institutions, the applicant was unable to check the discretized indicator assigned to it for the different risk indicators.

390 In that regard, it must be recalled that, according to the case-law cited in paragraph 265 above, the duty to state reasons does not require that the applicant has access to all of the information allowing it to verify the accuracy of the calculation of its *ex ante* contribution.

391 Specifically, as follows from the case-law cited in paragraph 270 above, the SRB is not required to provide the applicant with data which constitute business secrets relating to the economic situation of each of the other institutions concerned.

392 The SRB could legitimately take the view that the discretized indicator assigned to an institution constituted a business secret. The SRB could consider that any disclosure of that information would risk revealing the economic situation of such an institution and, in particular, the level of risk incurred by that institution in respect of certain financial activities, by allowing a direct comparison to be made between that risk level and the level incurred by the other institutions.

(iii) Step 3

393 In Step 3, for each risk indicator and sub-indicator, the SRB rescales the discretized indicators resulting from Step 2 over the range 1 to 1 000 in order to obtain a 'rescaled indicator' ($RI_{ij,n}$).

394 In order to calculate that rescaled indicator, the SRB applies a formula which uses the following three components:

– the discretized indicator assigned to the institution concerned in Step 2;

– the argument of the maximum function, the value of which corresponds to the number of the last bin for the risk indicator or sub-indicator concerned;

– the argument of the minimum function, the value of which corresponds to the number of the first bin for the risk indicator or sub-indicator in question.

395 The applicant had access to those components. First, the discretized indicator is the result of the operation in Step 2 described in paragraph 379 above. Secondly, the values of the arguments of the maximum and minimum functions referred to in paragraph 394 above can be found on pages 30 to 34 and 132 to 136 of Annex II to the contested decision, in the rows 'Bin min.' and 'Bin max.'.

396 Accordingly, the applicant had sufficient information to understand the operation performed in Step 3 and, thus, to obtain the rescaled indicator.

(iv) Step 4

397 In Step 4, for each risk indicator and sub-indicator, the SRB calculates the 'transformed rescaled indicator' ($TRI_{ij,n}$).

398 In that regard, point 1 of 'Step 4' in Annex I to Delegated Regulation 2015/63 assigns a positive sign or a negative sign to each risk indicator. For the risk indicators with a positive sign, the higher the values the higher the risk profile of the institution. For the risk indicators with a negative sign, the higher the values the lower the risk profile of the institution.

399 Once the sign has been applied, the SRB calculates the transformed rescaled indicators according to the formula provided for that purpose in point 2 of 'Step 4' in Annex I to Delegated Regulation 2015/63.

400 The transformed rescaled indicator is calculated using the rescaled indicator obtained in the course of Step 3. Thus, if the sign applied to the risk indicator concerned is negative, the transformed rescaled indicator has the same value as the rescaled indicator. However, if the signed applied to the risk indicator at issue is positive, the rescaled indicator must be deducted from the number 1 001, according to the formula $1\,001 - RI_{ij,n}$.

401 First of all, given the nature of the operations referred to in paragraph 400 above, which either do not involve any calculation or are confined to simple calculations which do not use additional data, the applicant cannot claim that it did not have sufficient information to verify those operations performed by the SRB.

402 Next, the applicant's argument that, in the context of Step 4, the SRB failed to explain the reasons why it had systematically applied a positive sign to the risk indicators of risk pillar IV must be dismissed.

403 In that regard, the SRB explained in recital 112 of the contested decision that the application of a positive or negative sign depended on the nature of the particular risk indicator. It went on to state that, for the indicators with a positive sign, the higher the values the higher the risk profile of the institution. Thus, the SRB applied a positive sign to all of the risk indicators which made up risk pillar IV, except for the IPS risk indicator, because the higher the values of those indicators the higher the risk profile of the institution.

404 In addition, the applicant is wrong to claim that it cannot verify the operations performed in the course of Step 4, since those operations are based on the values resulting from Step 3 which it cannot ascertain.

405 As set out in paragraphs 393 to 395 above, the applicant can calculate for itself the rescaled indicators applied to it, and therefore it can also verify whether the result of the transformation during Step 4 – which appears in the column 'Score of bin (TRI)' of its individual form – is correct.

406 Lastly, the applicant takes the view that, in the context of Step 4, the SRB failed to state reasons for its decision vis-à-vis the weight of the IPS risk indicator. Specifically, the SRB did not explain how it had taken into account, in accordance with the second subparagraph of Article 7(4) of Delegated Regulation 2015/63, the relative weight of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' for the purpose of applying the IPS risk indicator. Similarly, it did not explain the reasons for the allocation of the institutions into three bins, the assignment of the factors of adjustment of 7/9 and 5/9 to two of those bins, the criteria according to which the institutions had been assigned to the bins and the reasons why the applicant had been assigned to one of those particular bins.

407 On this point, it must be observed, first, that in recital 114 of the contested decision the SRB explained that, even though the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 required it to weight the IPS risk indicator according to the risk indicators set out therein, it had to ensure that even institutions with the riskiest profile could still benefit from their membership in an IPS in the context of the calculation of the *ex ante* contributions. With that in mind, the SRB stated, in recitals 114 to 116 of the contested decision and in paragraph 131 of Annex III to that decision that, in order to achieve that objective, it had established three bins to weight the IPS risk indicator and had assigned the institutions with the lowest risk profile to the third bin, in respect of which adjustment of that indicator was not provided. It also follows from those explanations that, using the same logic, the SRB assigned the institutions with an average risk profile and those with the highest risk profile to the second and first bins, respectively, applying to them an adjustment factor of 7/9 and 5/9 for that risk indicator.

408 On that last point, the SRB added in paragraph 131 of Annex III to the contested decision that, by applying the adjustment factors set out in paragraph 407 above, even institutions with the highest risk profile still benefitted from over 50% of the maximum advantage to which they were eligible on account of their membership in an IPS in connection with the calculation of the *ex ante* contributions.

409 Such explanations enable the applicant to understand the reasons which guided the SRB when weighting the IPS indicator and allow the Court to exercise its power of judicial review.

410 With regard, first, to the reasons why the applicant was assigned to a particular bin for the IPS risk indicator, it is sufficient to state that, in recital 115 of the contested decision, the SRB explained that it had ranked the institutions concerned according to the equally weighted arithmetic average of the transformed rescaled indicators of the nine sub-indicators of risk pillar IV.

411 Such a statement of reasons is sufficient, and therefore the applicant's argument cannot succeed.

(v) Step 5

412 In Step 5, the SRB performs the following operations.

413 In a first stage, the SRB aggregates the risk indicators (*i*) within each risk pillar (*j*) through a weighted arithmetic average, by applying the formula provided for that purpose in point 1 of 'Step 5' in Annex I to Delegated Regulation 2015/63.

414 That formula is solved using the weight of the risk indicator concerned in the particular risk pillar (w_{ij}) and of the transformed rescaled indicator. Those weights are stated not only in Article 7(2) to (4) of Delegated Regulation 2015/63, but also on the applicant's individual form and on page 5 of Annex II to the contested decision. In addition, the transformed rescaled indicator was obtained in the course of Step 4.

415 In those circumstances, the applicant cannot claim that it did not have access to the data needed to solve that formula.

416 In a second stage, the SRB aggregates the risk pillars (j) to compute the 'composite indicator' (CI_n) through a weighted geometric average, by applying the formula provided for that purpose in point 2 of 'Step 5' in Annex I to Delegated Regulation 2015/63.

417 That formula is solved using the weight of the risk pillars (W_j), as provided for in Article 7(1) of Delegated Regulation 2015/63, and of the values obtained following the aggregation of the risk indicators within each risk pillar, as part of the operation described in paragraphs 413 and 414 above. The applicant is notified of the latter values on its individual form.

418 In a third stage, the SRB adjusts the composite indicator (CI_n) by applying the formula provided for that purpose in point 3 of 'Step 5' in Annex I to Delegated Regulation 2015/63, namely 1 000 – CI_n, to obtain the 'final composite indicator' (FCI_n). Consequently, institutions with a higher risk profile are therefore given a higher final composite indicator.

419 In that context, the applicant submits that, in the context of Step 5, the SRB should have explained, first, the aggregation procedure for the risk indicators within each risk pillar, taking into account, inter alia, the relative weights of the indicators laid down in Article 7 of Delegated Regulation 2015/63 and setting out how it had arrived at the aggregation of those indicators and, second, how the composite indicator had been obtained. This is a fortiori the case since, during the 2021 contribution period, some of those same indicators were not applied by the SRB and their weight therefore had to be distributed.

420 In that regard, it must be stated first of all that, as is clear from paragraphs 412 to 418 above, the aggregation procedure for the risk indicators is based on the formulae provided for in points 1 to 3 of 'Step 5' in Annex I to Delegated Regulation 2015/63.

421 Next, it follows from those same paragraphs that the applicant had all the information needed to solve those formulae.

422 Finally, the SRB explained in recital 94 of the contested decision that, as certain risk indicators had not been applied during the 2021 contribution period, the weights of the available risk indicators had been proportionally rescaled, so that the sum of their weights was 100%, it being understood that such rescaling was provided for in Article 20(1) of Delegated Regulation 2015/63.

423 In the light of the foregoing, the applicant had sufficient information to understand the operations provided for in Step 5 and implemented by the SRB.

(vi) Step 6

424 In Step 6, the SRB performs the following two operations.

425 In a first stage, the SRB calculates the adjusting multiplier ($\tilde{R}_n$) by rescaling the final composite indicator resulting from Step 5 over a range of from 0.8 to 1.5, according to the formula provided for in point 1 of 'Step 6' in Annex I to Delegated Regulation 2015/63.

426 To solve that formula, the SRB uses three categories of data, namely:

– the final composite indicator of the institution concerned;

– the minimum function argument of the final composite indicator ($min\ FCI_n$), which corresponds to the minimum value of that indicator for all of the institutions contributing to the SRF for which such an indicator is calculated;

– the maximum function argument of the final composite indicator ($max\ FCI_n$), which corresponds to the maximum value of that same indicator for those institutions.

427 The final composite indicator of the institution concerned is obtained in Step 5. In addition, the minimum and maximum functions, to which reference is made in paragraph 426 above, are data which are identical for all of the institutions whose basic annual contribution is adjusted according to their risk profile. Those data can be found on the individual form of each institution and on page 4 of Annex II to the contested decision, in the fourth and fifth columns of the table in that annex, headed 'k' and 'l' respectively. Accordingly, the applicant had access to the data needed to solve the formula provided for in point 1 of 'Step 6' in Annex I to Delegated Regulation 2015/63.

428 In a second stage, the SRB calculates the final contribution of the institution concerned (c_n) using the formula set out in point 2 of 'Step 6' in Annex I to Delegated Regulation 2015/63.

429 That calculation is made on the basis of five data points, namely:

– the annual target level as adjusted in accordance with point 2 of 'Step 6' in Annex I to Delegated Regulation 2015/63 ('Target');

– the net liabilities of the particular institution adjusted in accordance with Article 5 of Delegated Regulation 2015/63, which is the numerator of the basic annual contribution (B_n);

– the sum of the risk-adjusted basic annual contributions of all of the institutions concerned ($\sum_{p=1}^{N}(B_p * \tilde{R}_p)$);

– the aggregate net liabilities of all of the institutions authorised in the territories of all of the participating Member States, which constitute the denominator of the annual basic contribution ($\sum_{q=1}^{N} B_q$);

– the adjusting multiplier of the particular institution.

430 The applicant's net liabilities, as adjusted in accordance with Article 5 of Delegated Regulation 2015/63, as well as its adjusting multiplier and the aggregate net liabilities of all of the institutions authorised in the territories of all of the participating Member States, were communicated to the applicant in its individual form. Furthermore, Annex II to the contested decision stated, on page 4, the adjusted annual target level – in the first column, headed 'h', in the table in that annex – and the sum of the risk-adjusted basic annual contributions of all of the institutions concerned, with that sum appearing in the third column, headed 'j', of the same table.

431 Lastly, supplementary explanations relating to Step 6 were provided by the SRB in recitals 118 to 121 of the contested decision.

432 In those circumstances, the applicant had sufficient information to understand the Step 6 calculations.

433 That conclusion is not invalidated by the applicant's arguments.

434 As regards the calculation of the adjusting multiplier in Step 6, as referred to in paragraphs 425 and 426 above, the applicant is wrong to claim that, since the final composite indicators of all of the institutions have not been communicated, it is unable to ascertain whether the values of the arguments of the minimum and maximum functions of the final composite indicators, mentioned in paragraph 426 above, are not exceptions causing the adjusting multipliers to be distorted.

435 On this point, it is clear from the case-law cited in paragraph 263 above that the duty to state reasons does not require that the applicant has access to all of the evidence enabling it to verify the accuracy of the calculation of its *ex ante* contribution. The information which the SRB is thus not required to communicate to the applicant also includes the final composite indicators of all of the institutions. The values of those indicators may constitute information about the economic situation of the institutions concerned and, in particular, about the level of risk incurred by them on the markets, it being understood that the institutions with a higher risk profile are given a higher final composite indicator. In those circumstances, the SRB could legitimately take the view that the disclosure of the final composite indicators of all of the institutions would infringe its obligation to protect the business secrets of the institutions concerned. Accordingly, in the light of the case-law cited in paragraph 265 above, the explanations provided by the SRB in recital 118 of the contested decision and the data communicated by the individual form and on page 4 of Annex II to that decision may be regarded as sufficient.

436 Similarly, the applicant cannot claim, with regard to the calculation of the final contribution in Step 6 as referred to in paragraphs 428 and 429 above, that, despite the reproduction of the formula used for that calculation and the explanation of its various components in the contested decision, the SRB fails to explain how it arrived, in the applicant's regard, at the result of the calculation stated in the individual form.

437 First, as is apparent from recitals 119 to 121 of the contested decision, the applicant's final contribution was calculated using the formula set out in point 2 of 'Step 6' in Annex I to Delegated Regulation 2015/63. Second, as observed in paragraph 430 above, the applicant could find the data needed to solve that formula in its individual form and in columns h and j of the table on page 4 of Annex II to the contested decision.

438 It follows from the foregoing that by using, first, the formulae provided for in Annex I to Delegated 2015/63 and, second, the data contained in Annexes I and II to the contested decision, the applicant is in fact able to verify, on a step-by-step basis, the calculation of its *ex ante* contribution by the SRB.

439 The third complaint of the fifth part of the second plea must therefore be dismissed.

(h) The seventh part, concerning the existence of unpublished interim decisions

440 The applicant submits that the statement of reasons for the contested decision is insufficient because the SRB adopted interim decisions which have not been published or communicated to the applicant.

441 The SRB disputes that line argument.

442 It follows from case-law that the statement of reasons contained in the decision fixing *ex ante* contributions must be deemed to be insufficient where that statement is based, as regards some of the elements in respect of which the SRB is required to state reasons, solely on other legal acts, such as interim decisions, which the SRB has adopted with a view to clarifying and, in some cases, supplementing certain aspects of the fixing of those contributions, but which have not been published or otherwise communicated to the institutions (see judgments of 28 November 2019, *Hypo Vorarlberg Bank* v *SRB*, T-377/16, T-645/16 and T-809/16, EU:T:2019:823, paragraphs 194 and 199, and of 28 November 2019, *Portigon* v *SRB*, T-365/16, EU:T:2019:824, paragraphs 171 and 176).

443 In the present case, the SRB produced, in response to a measure of inquiry of the Court of 9 November 2022, the interim decisions relevant to the calculation of the *ex ante* contributions for the 2021 contribution period. The non-confidential version of those decisions, which were then served on the applicant, include, inter alia, internal views addressed to the SRB's personnel with a view to providing guidance in the process of calculating the *ex ante* contributions.

444 However, as is clear from the summary of the contested decision in paragraphs 5 to 18 above, that decision contains a statement of reasons concerning the setting of the *ex ante* contributions for the 2021 contribution period.

445 Furthermore, the applicant has not identified any element contained in the interim decisions which was not reproduced in the contested decision itself and which was taken into account for the purposes of determining the *ex ante* contributions for the 2021 contribution period.

446 There is therefore nothing to show that the existence of the interim decisions had any impact whatsoever on the scope of the information available to the applicant in order to be able verify the legality of the setting of its *ex ante* contribution and to challenge it before the Courts of the European Union. In particular, as is clear from the examination of the first to sixth parts of the second plea, the applicant was able to understand all of the elements of the calculation of the *ex ante* contribution, except for the determination of the annual target level, solely on the basis of the contested decision.

447 Accordingly, the contested decision differs from the decision of the SRB setting *ex ante* contributions which was the subject of the cases that gave rise to the judgments of 28 November 2019, *Hypo Vorarlberg Bank* v *SRB* (T-377/16, T-645/16 and T-809/16, EU:T:2019:823), and of 28 November 2019, *Portigon* v *SRB* (T-365/16, EU:T:2019:824). That latter decision did not include, inter alia, information relating to the SRB's determination of risk pillar IV, as that information was contained only in the interim decisions at issue in those cases (judgments of 28 November 2019, *Hypo Vorarlberg Bank* v *SRB*, T-377/16, T-645/16 and T-809/16, EU:T:2019:823, paragraph 195, and of 28 November 2019, *Portigon* v *SRB*, T-365/16, EU:T:2019:824, paragraph 172).

448 Finally, the applicant has not explained how – taking into account the considerations contained in paragraphs 444 to 446 above – the publication of the interim decisions would have enable it to exercise its rights before the Courts of the European Union in better conditions, or how such publication would have allowed those courts to exercise their power of review more effectively.

449 In those circumstances, the mere failure to publish or to communicate the interim decisions cannot, in itself, entail a failure to state reasons for the contested decision.

450 In the light of the foregoing, the seventh part of the second plea must be dismissed.

(i) Conclusion on the second plea

451 In the light of the foregoing, the third part of the second plea must be upheld. The other parts of that plea must be dismissed.

3. The third plea, alleging infringement of the right to effective judicial protection because the contested decision cannot be verified

452 The applicant claims that the SRB breached the principle of effective judicial protection because judicial review of the contested decision is impossible in practice. First, neither the Court nor the applicant has at its disposal data relating to institutions other than the applicant, even though those data are necessary to verify the calculation of the *ex ante* contribution paid by the applicant. Second, even if the Court were to obtain access to the data in question, it would be unable to use them because it does not have access to the software used by the SRB to calculate the *ex ante* contributions, with a view to tracking the different steps of the calculation as provided for in Annex I to Delegated Regulation 2015/63.

453 The SRB disputes that line of argument.

454 As observed in paragraph 43 above, it fell to the Council and to the Commission, when establishing the system of calculating *ex ante* contributions by means of Delegated Regulation 2015/63 and Implementing Regulation 2015/81, to reconcile respect for business secrets with the principle of effective judicial protection, such that data constituting business secrets cannot be disclosed to the persons concerned and those data cannot, inter alia, be included in the statement of reasons for the decisions determining the amount of *ex ante* contributions.

455 Furthermore, pursuant to Article 339 TFEU and Article 88 of Regulation No 806/2014, the SRB was also required, when communicating the contested decision, to ensure that data constituting business secrets were not disclosed to the institutions.

456 That being said, it is for the Courts of the European Union to verify the merits of the reasons relied on by the SRB to oppose the communication of the data used for the purposes of calculating those contributions, as stated in paragraph 48 above.

457 In the present case, it is apparent from the examination conducted in paragraphs 292 to 302 above that the SRB was justified in opposing the communication to the applicant of the individual data related to the other institutions.

458 In addition, for the same reasons as those set out in paragraph 54 above, the argument that the SRB's use of software to calculate the *ex ante* contributions precludes the exercise of a subsequent judicial review must be dismissed.

459 In those circumstances, the third plea must be dismissed.

4. The sixth plea, alleging infringement of a number of provisions of primary and secondary law on account of the application to the applicant of a multiplier for the IPS risk indicator

460 The sixth plea is divided into four parts.

(a) The first part, alleging infringement of Article 113(7) of Regulation No 575/2013 and of Article 103(7)(h) of Directive 2014/59

461 The applicant recalls that, for the IPS risk indicator, the contested decision applied to it an adjustment factor of [*confidential*]. However, the application of such a factor does not satisfy the requirements of Article 113(7) of Regulation No 575/2013 or of Article 103(7)(h) of Directive 2014/59. The IPS to which the applicant belongs protects all of the institutions which are members of that scheme in the same way, and therefore differentiating between those institutions in connection with the IPS risk indicator is contrary to the wording and the spirit of those provisions.

462 The SRB disputes that line of argument.

463 First, as is clear from paragraphs 132 and 139 above, nothing in the wording of Article 103(7) of Directive 2014/59 or of Article 113(7) of Regulation No 575/2013 prohibited the Commission from providing in the second subparagraph of Article 7(4) of Delegated Regulation 2015/63 that the SRB, when it applies the IPS risk indicator, must take into account the relative weight of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'.

464 Second, it follows from recitals 114 to 116 of the contested decision and from paragraph 131 of Annex III to that decision that the SRB complied with its obligations under Article 7(4) of Delegated Regulation 2015/63, the illegality of which has, moreover, not been established.

465 The first part of the sixth plea must therefore be dismissed.

(b) The second part, concerning infringement of Article 16 of the Charter and breach of the principle of proportionality

466 With regard to the IPS indicator, the applicant submits that its classification in [*confidential*] and, therefore, the assignment to it of the adjustment factor [*confidential*] – which had the effect [*confidential*] – are disproportionate and infringe its freedom to conduct a business, enshrined in Article 16 of the Charter, and breach the principle of proportionality, enshrined in Article 52(1) of the Charter.

467 Assigning such an adjustment factor for the IPS risk indicator is manifestly unjustified and arbitrary, because the applicant has a sound capital base and a positive risk profile, meaning that the probability of its resolution is low. This is apparent, inter alia, on reading the results of the applicant's own analysis of the risk indicators and the ECB's statistics based on the information available in 2019.

468 The SRB disputes that line of argument.

469 As a preliminary point, it must be observed that the applicant simply pleads infringement of the freedom to conduct a business enshrined in Article 16 of the Charter and of the principle of proportionality, without developing any targeted arguments regarding those principles.

470 In the light of the case-law cited in paragraph 217 above, the applicant's complaints must thus be rejected in so far as they concern the breach of such principles.

471 Furthermore, if the applicant's argument is to be understood as meaning that it claims, in reality, that the SRB made a manifest error of assessment when it assigned to it the [*confidential*] for the IPS risk indicator, the following should be noted.

472 With regard to the IPS risk indicator, the SRB and the Commission explained that the failure of an institution with a broad and complex balance sheet, such as the applicant, could completely exhaust an IPS' funds, unlike the failure of an institution with a more reduced and simpler balance sheet. Accordingly, the risk of the applicant having to avail itself of the SRF is not necessarily covered by its membership in an IPS. However, the applicant has not adduced evidence to contest that allegation.

473 Moreover, the applicant cannot rely on its own analysis of the risk indicators or on the ECB's statistics to challenge the SRB's assessment of the IPS risk indicator.

474 First, that analysis and those statistics do not relate to all of the institutions whose data were taken into account to calculate the applicant's IPS risk indicator. In its own analysis, the applicant compares itself with just six other German institutions. However, as is clear from Annex II to the contested decision, the SRB took into account the data from 1 627 institutions to form the bins related to the IPS risk indicator on the union base and from 776 institutions to form the bins related to the IPS risk indicator on the national base.

475 The same applies to the ECB's statistics. Those statistics relate to only 113 institutions, that is to say, a fraction of the institutions whose data were taken into account by the SRB to form the bins related to the IPS risk indicator.

476 Second, the applicant's own analysis and the ECB's statistics cover factors which are not relevant to the weighting of the IPS risk indicator.

477 Under Article 7(4) of Delegated Regulation 2015/63, when the SRB weights the IPS risk indicator, it must take account of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability', which applies to the institution concerned as provided for in Article 6(5)(a) of that delegated regulation.

478 However, neither the different factors in the applicant's own analysis of the risk indicators, namely the Common Equity Tier 1 capital ratio, the total capital ratio, the TIER 1 capital ratio, the non-performing loan (NPL) ratio, the coverage ratio, the forbearance ratio and the non-performing exposures (NPE) ratio, nor the factors in the ECB's statistics, namely the total capital ratio, the Common Equity Tier 1 capital ratio and the leverage ratio, are included in either Article 7(4) of Delegated Regulation 2015/63 or Article 6(5)(a) of that delegated regulation.

479 The second part of the sixth plea must therefore be dismissed.

(c) The third part, concerning the infringement of Article 20 of the Charter and breach of the principle of equal treatment

480 The applicant claims that the application to it of the adjustment factor of [*confidential*] for the IPS risk indicator gives rise to an unjustified difference in treatment as regards institutions assigned [*confidential*] for the IPS risk indicator, and therefore the contested decision infringes Article 20 of the Charter and the principle of equal treatment.

481 Specifically, membership in an IPS is a factor which makes all of the institutions concerned comparable and there is no objective criterion capable of justifying a difference in treatment between the different institutions belonging to an IPS. The risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' is not an appropriate criterion, as is set out in the context of the fifth plea.

482 In addition, assigning the adjustment factor of [*confidential*] to the applicant constitutes a manifestly inappropriate difference in treatment, in the light of the probabilities of its failure, its resolution and its use of the SRF.

483 The SRB disputes those arguments.

484 First, as has been observed in paragraphs 160 to 163 above, the applicant cannot claim that all of the institutions belonging to an IPS are in a comparable situation.

485 Second, as has been found in paragraph 165 above, the elements related to the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' used to weight the IPS risk indicator between the various institutions belonging to an IPS are objective criteria which are, in addition, consistent with one of the objectives of the SRM, namely to encourage the institutions to adopt less risky methods of operation.

486 In the light of the case-law cited in paragraph 159 above, the third part of the sixth plea must therefore be dismissed.

(d) The fourth part, concerning breach of the principle of good administration

487 The fourth part is divided into two complaints.

(1) The first complaint, alleging that the SRB failed to provide a proper statement of reasons for the contested decision

488 The applicant claims that, in the contested decision, the SRB does not explain to the requisite legal standard, first, the reasons why it is appropriate to create three bins for the weighting of the IPS risk indicator rather than, for example, two or five bins and, second, why the adjustment factor of the first bin must be 5/9 and that of the second bin 7/9 in order to 'diversify the impact of the participation in [an IPS] depending on additional factors that relate to the riskiness of the institutions'.

489 The SRB disputes those arguments.

490 It must be observed that the applicant repeats, in essence, some of the arguments which it put forward in relation to Step 4 in support of the third complaint of the fifth part of the second plea.

491 Accordingly, on the same grounds as those set out in paragraphs 407 to 409 above, the first complaint of the fourth part of the sixth plea must be dismissed.

(2) The second complaint, alleging that the SRB breached its obligation to investigate

492 The applicant submits that, by assigning it to bin [*confidential*] for the IPS risk indicator, the SRB failed to take into account all of the relevant facts in a complete, scrupulous and impartial manner. It did not examine how the protection afforded by the IPS to which the applicant belongs benefits its members. Similarly, it failed to verify whether, and to what extent, Article 7(4) of Delegated Regulation 2015/63 could justify the formation of a bin and a difference in treatment based on risk as compared with the other members of the IPS to which the applicant belongs. The same goes for the examination of whether, and to what extent, the applicant's risk profile and other factors in the present case do not justify a bin assignment that would be more favourable to it.

493 In that context, the SRB also made errors of assessment. The binning process culminates in erroneous results, in particular in case of the merger of two institutions belonging to an IPS. In such a situation, the assignment of the other institutions to bins would be changed, because there would be fewer institutions to allocate into the different bins, whereas the decisive criteria for the attribution of the risk indicator referred to in Article 6(7) of Delegated Regulation 2015/63 would remain unchanged.

494 The SRB contests those arguments.

495 The principle of good administration, as enshrined in Article 41 of the Charter, imposes on the EU institutions and bodies the duty to examine carefully and impartially all of the relevant aspects of the individual case (see, to that effect, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14, and of 23 September 2009, *Estonia* v *Commission*, T-263/07, EU:T:2009:351, paragraph 99 and the case-law cited).

496 Here, it must be observed, first, that the SRB, when weighting the IPS risk indicator, can take into account only the elements set out in Article 7(4) of Delegated Regulation 2015/63, that is to say the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability', as provided for in Article 6(5)(a) of that delegated regulation.

497 Second, the SRB is required to calculate the IPS risk indicator on the basis of the data communicated by the institutions in accordance with Article 14 of Delegated Regulation 2015/63.

498 In those circumstances, the SRB cannot be criticised for having failed to consider, when calculating the applicant's *ex ante* contribution, the elements invoked by the applicant, such as those mentioned in paragraph 492 above, which are not provided for in Article 7(4) or Article 14 of Delegated Regulation 2015/63.

499 Third, the complaint alleging that the SRB made a manifest error of assessment when it established the bins for the weighting of the IPS risk indicator must be rejected.

500 First of all, it follows from paragraphs 159 to 165 above that the SRB may make distinctions between the members of an IPS in order to assess the risk profile of the different institutions for the purposes of calculating their *ex ante* contribution.

501 Next, as is clear from the examination of the fifth plea above, the SRB could make such distinctions based on the criterion set out in Article 7(4) of Delegated Regulation 2015/63, according to which it is to weight the IPS risk indicator on the basis of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability'.

502 Finally, the applicant has not presented to the Court any specific evidence intended to challenge the application of that criterion.

503 Fourth, as the SRB has essentially explained, without that explanation being contested by the applicant, if two institutions belonging to an IPS merge, that merger leads to a reduction in the number of institutions which must be assigned to the bins established to weight the IPS risk indicator, and that factor will automatically be taken into account in the final calculation of that risk indicator, provided that that merger took place before the end of the reference year referred to in Article 14 of Delegated Regulation 2015/63.

504 The fourth part of the sixth plea must therefore be dismissed.

(e) Conclusion on the sixth plea

505 In the light of the foregoing, the sixth plea must be dismissed.

5. The eighth plea, alleging infringement of Articles 16 and 52 of the Charter on account of the inappropriate nature of the adjusting multiplier

506 The applicant submits that the adjusting multipliers applied to it – namely the multiplier applied to it to calculate its *ex ante* contribution on the union base and that applied to it to calculate that contribution on the national base – are inconsistent with its risk profile, and therefore the contested decision infringes Article 16 of the Charter and breaches the principle of proportionality, as enshrined in Article 52(1) of the Charter.

507 The applicant claims, in particular, that it has a good capital base and a positive risk profile. Accordingly, the probability of its resolution is low. This is apparent, inter alia, on reading the results of its own analysis and from the ECB's statistics based on the information available in 2019.

508 In addition, in relation to the IPS risk indicator, the SRB did not provide the applicant with any objective reason to justify the latter's assignment to bin [*confidential*], despite the complete protection afforded by the IPS to which it belongs. This gives rise to an *ex ante* contribution [*confidential*], and therefore the contested decision infringes Article 16 of the Charter, the principle of proportionality and Article 20 of the Charter.

509 The SRB contests those arguments.

510 As a preliminary point, it must be observed that the applicant simply relies on breach of the principles enshrined in Articles 16 and 20 of the Charter and of the principle of proportionality, without putting forward any targeted arguments relating to those principles.

511 In the light of the case-law cited in paragraph 217 above, the applicant's arguments must therefore be dismissed in so far as they concern the breach of those principles.

512 Furthermore, and in any event, if that line of argument is to be understood as meaning that the applicant submits, in reality, that the SRB made a manifest error of assessment when it calculated the applicant's adjusting multipliers, the following should be noted.

513 In the first place, as regards the complaint alleging that the SRB assigned the applicant to an incorrect bin for the IPS risk indicator, that complaint must be rejected for the same reasons as those set out in paragraphs 500 to 502 above.

514 In the second place, the applicant cannot rely on its own analysis of the risk indicators to challenge the calculation of its adjusting multipliers. First, it is clear from recital 112 of the contested decision that the SRB took into account sixteen risk indicators in the calculation of the *ex ante* contributions. The applicant's analysis covers only one of those sixteen indicators, namely the Common Equity Tier 1 capital ratio. Second, in that analysis, the applicant compares itself with six other German institutions. By contrast, as is clear from Annex II to the contested decision, the SRB took account of data from 1 627 institutions to calculate its *ex ante* contribution on the union base and from 776 institutions to calculate that contribution on the national base.

515 Similarly, the applicant cannot rely on the ECB's statistics to contest the calculation of its adjusting multipliers. First, those statistics cover only two of the sixteen risk indicators taken into account by the SRB in the calculation of the *ex ante* contributions, namely the 'Common Equity Tier 1 capital ratio' and the leverage ratio. Second, those statistics relate to only 113 institutions, that is to say, a fraction of the institutions whose data were taken into account by the SRB for that calculation.

516 In the light of the foregoing, the eighth plea must be dismissed.

6. The ninth plea, alleging infringement of Articles 16, 20, 41 and 52 of the Charter on account of manifest errors of assessment

517 The applicant claims that the SRB misused its discretion and, therefore, infringed Articles 16, 20 and 41 of the Charter and breached the principle of proportionality enshrined in Article 52 of the Charter on account of the multiple manifest errors of assessment which the SRB made when calculating the applicant's *ex ante* contribution.

518 In the first place, the SRB neither took due account of nor determined:

– the impact that pro-cyclical contributions could have on the financial position of the institutions when determining the annual target level provided for in Article 69(2) of Regulation No 806/2014;

– the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability';

– the IPS risk indicator;

– the rescaling of the weights of the risk indicators within a risk pillar in the event certain risk indicators are not applied.

519 In the second place, the risk indicators and the weights applied pursuant to Delegated Regulation 2015/63 permit the formation of bins and an allocation to those bins which result in a charge for the applicant which is manifestly unjustified on the merits, disproportionate and discriminatory. As has been set out in the context of the seventh plea, Annex I to that delegated regulation gives rise to a situation in which the range of maximum and minimum values is disproportionately wide for the first and last bins, and in which several bins are empty and the number of institutions in other bins is manifestly too high. In that regard, the SRB abused its discretion and failed to make the adjustments to the *ex ante* contributions required by the principles of equal treatment and proportionality.

520 The SRB disputes that line of argument.

521 First of all, it must be observed that the applicant simply relies on breach of the principles enshrined in Articles 16, 20 and 41 of the Charter and of the principle of proportionality enshrined in Article 52 of the Charter, without putting forward any independent and targeted arguments regarding those principles.

522 In the light of the case-law cited in paragraph 217 above, the applicant's arguments must therefore be rejected in so far as they concern the breach of those principles.

523 Next, in so far as the applicant submits that the SRB made manifest errors of assessment when establishing the bins and assigning the institutions to those bins, that complaint is not supported by any specific arguments. In particular, the applicant does not explain how the discretion afforded to the SRB is bound by the factors stated in paragraph 518 above, nor how exactly the SRB should have taken those factors into account.

524 Similarly, although the applicant alleges that the SRB failed to make the 'necessary individual adjustments' to the results of the application of the mathematical formula contained in point 2 of 'Step 2' in Annex I to Delegated Regulation 2015/63 to satisfy the principles of equal treatment and proportionality, it does not specify the nature of such adjustments.

525 Finally, the applicant put forward an ambiguous line of argument concerning the binning method. On the one hand, referring to the arguments raised by it in the context of the seventh plea, it alleges that the SRB failed to acknowledge that the application of Step 2 led to a disproportionally wide range of values for the first and last bins, that various bins were empty and that the number of institutions contained in the first bins was manifestly too high. By its complaint, the applicant

thus implies that, in its view, the binning method is incompatible with higher-ranking rules of law, without however raising a plea of illegality in the context of this plea. Such a plea must however be relied on in a clear manner so as to allow the author of the act to defend the legality of that act (see, to that effect, order of 20 January 2009, *Sack* v *Commission*, C-38/08 P, EU:C:2009:21, paragraphs 21 and 22). On the other hand, the applicant alleges that, on those same grounds, the SRB infringed the requirements of Annex I to Delegated Regulation 2015/63. In those circumstances, it is impossible for the Court to identify the precise scope of the applicant's arguments in that regard and to rule on their merits.

526 In the light of the foregoing, the ninth plea must therefore be dismissed.

7. The eleventh plea, alleging infringement of Article 70(2) of Regulation No 806/2014 and the incompatibility of Articles 69 and 70 of Regulation No 806/2014 with higher-ranking rules

527 It is established that the applicant put forward the eleventh plea for the first time in the reply. Despite that fact, it considers that that plea is admissible because it is based on points of fact and of law which came to light in the course of the judicial proceedings. The element required to understand whether the annual target level exceeds the cap of 12.5% of the final target level, which is provided for in Article 70(2) of Regulation No 806/2014, was brought to its attention by the SRB's Decision SRB/ES/2022/18 of 11 April 2022 on the calculation of the *ex ante* contributions to the SRF for 2022.

528 The SRB contends, first, that this plea is inadmissible because it was raised out of time and, second, that it should be dismissed on the merits.

529 In accordance with Article 84(1) of the Rules of Procedure, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or fact which have come to light in the course of the procedure or it constitutes an amplification of a plea made previously, whether directly or by implication, in the application initiating proceedings and which is closely connected therewith (see, to that effect, judgment of 5 October 2020, *HeidelbergCement and Schwenk Zement* v *Commission*, T-380/17, EU:T:2020:471, paragraph 87 and the case-law cited).

530 First, it is established that the SRB stated in the fact sheet referred to in paragraph 326 above the amount of the final target level forecasted by it, in the form of a range of between EUR 70 billion and EUR 75 billion, for the purposes of setting the *ex ante* contributions for the 2021 contribution period. Second, it is clear from the application that the applicant had been able to take note of that fact sheet before bringing its action, since it referred to it in the application in the context of the arguments raised in support of its second plea.

531 In those circumstances, the applicant cannot claim that the points of fact relied on it in support of the eleventh plea, which would justify introducing that plea at the reply stage, were not already known to it when it brought its action.

532 In addition, the applicant has not submitted that this plea constitutes an amplification of a plea made previously.

533 In those circumstances, the eleventh plea must be dismissed as inadmissible.

534 Furthermore, even if the eleventh plea were admissible, the Court would be unable to assess its merits. It is clear from paragraphs 308 to 340 above that the contested decision is vitiated by a failure to state reasons relating to the determination of the annual target level for the 2021 contribution and must be annulled on that ground. Such a failure to state reasons prevents the Court from examining the merits of the eleventh plea.

C. Conclusion

535 It follows from all of the foregoing that the third part of the second plea is well founded, whereas the other parts of that plea, and all the other pleas in law, must be dismissed. Since the third part of the second plea is, on its own, capable of forming the basis for the annulment of the contested decision, that decision must be annulled in so far as it concerns the applicant.

V. Limitation of the temporal effects of the judgment

536 The SRB asks the Court, in the event that the contested decision is annulled, to maintain the effects of that decision until it is replaced or, at the very least, for a period of six months from the date on which the judgment has become final.

537 The applicant stated at the hearing, in essence, that it did not oppose that request in so far as the contested decision were annulled on the basis of the infringement of an essential procedural requirement.

538 It must be recalled that, under the second paragraph of Article 264 TFEU, the EU judicature 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.

539 In that regard, it follows from case-law 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 and where the legality of the act in question is contested not because of its aim or content, but on grounds of infringement of essential procedural requirements (see judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 175 and the case-law cited).

540 In the present case, the contested decision was taken in infringement of essential procedural requirements. However, the Court has not found, in the present proceedings, any error affecting the substantive legality of that decision.

541 In addition, as the Court of Justice held in the judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB* (C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 177), it must be found that to annul the contested decision 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.

542 In those circumstances, the Court considers it appropriate to maintain the effects of the contested decision at issue, in so far as it concerns the applicant, 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 applicant's *ex ante* contribution to the SRF for the 2021 contribution period.

VI. Costs

543 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has applied for costs and the SRB has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the applicant.

544 The Commission is to bear its own costs, in accordance with Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Eighth Chamber, Extended Composition)

hereby:

1. **Annuls Decision SRB/ES/2021/22 of the Single Resolution Board (SRB) of 14 April 2021 on the calculation of the 2021 *ex-ante* contributions to the Single Resolution Fund, in so far as it concerns Landesbank Baden-Württemberg;**

2. **Maintains the effects of Decision SRB/ES/2021/22, 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 the present judgment, of a new decision of the SRB fixing the applicant's *ex ante* contribution to the Single Resolution Fund for the 2021 contribution period;**

3. **Orders the SRB to bear its own costs and to pay those incurred by Landesbank Baden-Württemberg;**

4. **Orders the European Commission to bear its own costs.**

Kornezov De Baere Petrlík

Kecsmár Kingston

Delivered in open court in Luxembourg on 20 December 2023.

[Signatures]

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