

2. Second plea in law, alleging, in the alternative to the first plea, the breach of Article 103(2) and 103(7) of Directive 2014/59/EU and of Article 290 TFEU because the delegated regulation, as applied by the SRB in the contested decision, exceeds the mandate provided to the European Commission, resulting in the inapplicability of the delegated regulation, in accordance with Article 277 TFEU.
 - Contrary to Article 290 TFEU, the delegated regulation supplements essential elements of Directive 2014/59/EU.
 - If Articles 4(1), 4(2) and 16(2) of the delegated regulation can only be interpreted as meaning that the SRB must use incomparable data, the delegated regulation is not in overall compliance with the text and objectives of Directive 2014/59/EU.
 - In so far as the delegated regulation sets rules on the calculation of the basic annual contribution, the delegated regulation exceeds the content of the mandate provided by Article 103(7) of Directive 2014/59/EU.
3. Third plea in law, alleging breach of the principle of proportionality by not properly taking into account the applicant's covered deposits.
 - The SRB's calculation methodology is unsuitable to attain the objectives of Directive 2014/59/EU, Regulation 806/2014 and the delegated regulation.
 - The SRB's calculation methodology also goes beyond what is necessary to achieve the objectives pursued by the legislation.
4. Fourth plea in law, alleging breach of the principle of legal certainty by not properly taking into account the applicant's covered deposits.
 - The applicant could not have foreseen the SRB's interpretation of the delegated regulation.
5. Fifth plea in law, alleging breach of the principle of equal treatment by not properly taking into account the applicant's covered deposits.
 - The applicant has to pay a significantly higher Single Resolution Fund contribution than other banks with the same, or a similar, size and risk profile.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).

⁽²⁾ 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).

⁽³⁾ 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).

Action brought on 18 July 2018 — Aeris Invest v ECB

(Case T-442/18)

(2018/C 311/16)

Language of the case: Spanish

Parties

Applicant: Aeris Invest Sàrl (Luxembourg, Luxembourg) (represented by: S. Chimenos Minguella and G. Ferrer González, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the General Court should:

- Annul European Central Bank Decisions LS/MD/18/141 and LS/PT/2018/9 of 8 May and 9 February 2018, respectively;
- Order the European Central Bank to pay the costs.

Pleas in law and main arguments

The present application seeks the annulment of the European Central Bank ('ECB') Decision LS/MD/18/141 of 8 May 2018 concerning the confirmatory application for access to ECB documents, together with the previous European Central Bank Decision LS/PT/2018/9 of 9 February 2018 concerning the application for access to ECB documents.

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

1. First plea in law, alleging a failure to give adequate reasons for the ECB's decisions refusing access to the documentation concerned, as those decisions failed to give due consideration to the aims pursued by the Community legislature in establishing the right of natural and legal persons to access documents of the European institutions, in the context of a transparent procedure and in the light of the principles of good governance and citizen participation. Moreover, the arguments put forward by the ECB are general in nature. Similarly, the ECB has failed to take into account the fact that the disclosure of the documents requested can in no way affect the smooth progress of the decision-making procedure in the context of the resolution of credit institutions. Not only has the specific resolution procedure been concluded, but it is now under judicial review, so that the refusal of access makes that review more difficult for the Court itself. Lastly, the decisions fail to take into account the fact that access to the documentation requested is for the sole purpose of exercising the right to an effective remedy laid down in Article 47 of the Charter of Fundamental Rights of the European Union.
 2. Second plea in law, alleging that the contested decisions infringe Article 4(1)(c) of Decision ECB/2004/3 on public access to European Central Bank documents, in so far as those decisions refuse the applicant access to the information requested on the ground that the documents are, in whole or in part, covered by a general presumption of non-accessibility as they are confidential documents covered by the professional secrecy applicable to the institutions. That general presumption of non-accessibility is not expressly provided for in the sector-specific legislation applicable and, if it did exist, it would not be applicable, as the exceptions to the right of access cannot be interpreted broadly and on the basis of analogy.
 3. Third plea in law, alleging that the contested decisions breach Article 4(1)(c) of Decision ECB/2004/3, in so far as those decisions refuse the applicant access to the information requested on the ground that the documents are, in whole or in part, covered by the professional secrecy applicable to the institutions, when they are required in judicial proceedings and such refusal prevents or impedes the exercise of the public judicial function.
 4. Fourth plea in law, alleging that the contested decisions breach Article 4(1)(a), second and sixth indents, of Decision ECB/2004/3, in so far as they assert that the disclosure of the information requested may prejudice the banking system in general.
 5. Fifth plea in law, alleging that the contested decisions breach Article 4(2), first indent, of Decision ECB/2004/3, in asserting that the disclosure of the documents and information requested may affect the business interests of Banco Santander and have an impact on future inspections.
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