



C/2023/142

16.10.2023

**Action brought on 17 July 2023 — ABN AMRO Bank and ABN AMRO Hypotheken Groep v SRB**

**(Case T-428/23)**

(C/2023/142)

*Language of the case: Dutch*

**Parties**

*Applicants:* ABN AMRO Bank NV (Amsterdam, Netherlands), ABN AMRO Hypotheken Groep BV (Amersfoort, Netherlands) (represented by: R. Raas and T. Barkhuysen, lawyers)

*Defendant:* Single Resolution Board

**Form of order sought**

The applicants claim that the Court should:

- annul in part the decision of the SRB of 2 May 2023 (SRB/ES/2023/23), including the annexes thereto, in so far as it leads to an incorrect and unjustifiable determination of ABN AMRO Hypotheken Groep's contributions ('AAHG') for 2016, 2017, 2018, 2019, 2020, 2021, 2022 and/or 2023, by including the adjustment item on AAHG's balance sheet in the calculation of contributions and, in particular, in AAHG's 'total liabilities', and
- order the SRB to pay ABN AMRO's costs or, in the alternative, an appropriate part of its costs.

**Pleas in law and main arguments**

In support of the action, the applicants put forward three pleas in law.

1. First plea: The contested decision determines AAHG's contribution to the Single Resolution Fund ('SRF') for the years 2016 to 2023 in breach of Regulation (EU) No 806/2014 and Delegated Regulation (EU) 2015/63 ('CDR') by incorrectly and unjustifiably including an accounting adjustment item in the taxable amount and not excluding it from the calculation of SRF contributions as intra-group liabilities on the basis of Article 5(1) of Delegated Regulation 2015/63. ABN AMRO is of course willing to bear its responsibility to contribute to the SRF, but does not however wish unduly to pay essentially the same obligation twice. In that regard, the SRB:
  - failed to take sufficient account of the particular circumstances that follow from the manner in which ABN AMRO designed its securitisation transactions;
  - interprets Article 70 of Regulation No 806/2014 in disregard of the wording, objectives and context of that regulation, by not including only AAHG's actual obligations in the taxable amount;
  - applies the definition of 'total liabilities' in Article 3(11) of Delegated Regulation 2015/63 incorrectly and unjustifiably for the determination of the fixed part of the SRF contribution whereas it applies only to the risk-adjusted contribution; and
  - applies Regulation No 806/2014 and Delegated Regulation 2015/63 in breach of the objectives of that regulation, resulting in an unjustified and inexplicable double counting.
2. Second plea: The contested decision infringes the principles of legal certainty, protection of legitimate expectations and the right to good administration (Article 41 of the Charter), which must also be examined in the light of the right to the protection of property (Article 17 of the Charter).
  - The SRB de facto revokes, in breach of the law, the previous formally adopted levy decisions for the years 2016 to 2022 in respect of AAHG.
  - The SRB returns — also for 2023 — to a long-established practice concerning the determination of AAHG's contributions and the expectations raised at ABN AMRO over many years by the SRB and De Nederlandsche Bank N. V. ('DNB'), which result from correspondence with the SRB and DNB and formal pricing decisions for the years 2016 to 2022.

- ABN AMRO acted in accordance with the expectation created. As a result, ABN AMRO was deprived of the possibility of processing the securitisation transactions in the balance sheet differently, of terminating or phasing them out earlier, which would have eliminated the adjustment item on AAHG's balance sheet, and therefore also the unjustified double counting.
3. Third plea: The contested decision of the SRB also entails, in itself, an infringement of the principle of proportionality (Article 5(4) TFEU and Article 52(1) of the Charter), which is also protected by the right to good administration (Article 41 of the Charter) and the right to protection of property (Article 17 of the Charter).
- ABN AMRO has now had to contribute, on behalf of AAHG, a significantly overdetermined amount to the SRF.
  - The negative effects of the contested decision on ABN AMRO are out of proportion to the objective to be served by the SRB.
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