Reports of Cases

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

22 January 2025 *

(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 *ex ante* contributions for the 2019 contribution period – Articles 12 and 14 of Delegated Regulation (EU) 2015/63 – Concept of 'change of status' – Institutional protection scheme – Plea of illegality)

In Case T-498/19,

Banco Cooperativo Español, SA, established in Madrid (Spain), represented by D. Sarmiento Ramírez-Escudero and J. Beltrán de Lubiano Sáez de Urabain, lawyers,

applicant,

v

Single Resolution Board (SRB), represented by M. Rius Riu and C. De Falco, acting as Agents, and by B. Meyring, F.B. Fernández de Trocóniz Robles, T. Klupsch and S. Ianc, lawyers,

defendant,

supported by

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

intervener,

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of A. Kornezov, President, E. Buttigieg, G. Hesse, D. Petrlík (Rapporteur) and L. Spangsberg Grønfeldt, Judges,

Registrar: S. Jund, Administrator,

having regard to the written part of the procedure,

further to the hearing on 9 July 2024,

* Language of the case: Spanish.

gives the following

Judgment

1 By its action under Article 263 TFEU, the applicant, Banco Cooperativo Español, SA, seeks annulment of Decision SRB/ES/2022/47 of the Single Resolution Board (SRB) of 8 August 2022 withdrawing Decision SRB/ES/SRF/2019/10 of the SRB of 16 April 2019 on the 2019 ex-ante contributions to the Single Resolution Fund (SRF) in so far as it concerns the institutions listed in Annex I thereto and calculating the 2019 *ex ante* contributions of those institutions to the SRF ('the contested decision'), in so far as it concerns the applicant.

Background to the dispute and events subsequent to the bringing of the action

2 The applicant is a credit institution established in Spain. It is a member of the Institutional Protection Scheme ('IPS') of the Banco Cooperativo SPI, which was authorised in March 2018 by the Banco de España (Bank of Spain, Spain) in accordance with 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).

3 By its decision SRB/ES/SRF/2019/10, of 16 April 2019, on the calculation of the 2019 ex-ante contributions to the SRF ('the initial 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 SRF ('the *ex ante* contributions') for 2019 ('the 2019 contribution period') of the institutions subject to the combined provisions of Article 2 and Article 67(4) of that regulation ('the institutions'), including the applicant.

4 By an assessment notice of 29 April 2019, the Fondo de Reestructuración Ordenada Bancaria (FROB, Fund for Orderly Bank Restructuring, Spain), in its capacity as national resolution authority within the meaning of Article 3(1)(3) of Regulation No 806/2014, ordered the applicant to pay the amount of its *ex ante* contribution for the 2019 contribution period, as set by the SRB.

5 On 8 August 2022 the SRB adopted the contested decision, by which it withdrew and replaced the initial decision. According to recitals 15 to 18 of the contested decision, its purpose was to remedy the failure to state reasons in the initial decision that the SRB identified following 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) and the orders of 3 March 2022, *SRB* v *Portigon and Commission* (C-664/20 P, not published, EU:C:2022:161), and of 3 March 2022, *SRB* v *Hypo Vorarlberg Bank* (C-663/20 P, not published, EU:C:2022:162).

6 On 19 September 2022, the applicant was notified of the contested decision.

7 The applicant and the SRB disagree as to the factors which must be taken into account for the purposes of calculating the applicant's *ex ante* contribution for the 2019 contribution period. In particular, the applicant submits that the SRB should have taken into account its participation in an IPS in 2018, which it failed to do.

Contested decision

8 The contested decision consists of the body of that decision accompanied, as far as concerns the applicant, by four annexes.

9 The body of the contested decision describes the process for determining the *ex ante* contributions for the 2019 contribution period, which is applicable to all institutions.

10 Specifically, in Section 6 of the contested 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 (EU) No 806/2014 with regard to *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1) for the 2019 contribution period ('the annual target level').

11 In addition, the SRB explained that it had determined that the annual target level would be 1/8th of 1.15% of the amount of covered deposits of all institutions in 2018, as obtained from data provided by deposit guarantee schemes in accordance with 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).

12 In Section 7 of the contested decision, the SRB described the method to be used to calculate the *ex ante* contributions for the 2019 contribution period.

13 In Section 7 of the contested decision, the SRB also explained that institutions other than those paying a flat-rate contribution in view of their particular characteristics had to pay an *ex ante* contribution adjusted depending on their risk profile, which it had determined following the main stages set out below.

14 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 to the amount of an institution's liabilities 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 the Member States participating in the Single Resolution Mechanism (SRM). 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.

15 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.

16 Lastly, the SRB calculated the *ex ante* contribution of each institution by spreading out the annual target level among all of the institutions using a ratio based on the basic annual contribution adjusted according to the risk profile.

Forms of order sought

17 The applicant claims, in essence, in the final form of its pleadings, that the Court should:

– annul the contested decision in so far as it relates to the applicant;

– order the SRB to pay the costs.

18 The SRB contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

19 The European Commission contends that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

20 In the application initiating proceedings, the applicant raises two pleas in law, concerning, first, infringement of Articles 12 and 14 of Delegated Regulation 2015/63, in so far as the SRB failed to take account of its participation in an IPS for the purposes of calculating the *ex ante* contribution for the 2019 contribution period and, second, in the alternative, a plea of illegality in respect of Articles 12 and 14 of Delegated Regulation 2015/63 on the ground of infringement of Article 103(2) and (7) 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).

21 In the statement of modification of the application, lodged at the Registry of the General Court on 20 September 2022 pursuant to Article 86 of the Rules of Procedure of the General Court, the applicant states that it maintains all of its arguments set out in its application initiating proceedings, while specifying that, following the withdrawal and replacement of the initial decision by the contested decision, its forms of order sought must be understood as referring to the contested decision.

22 It is appropriate to examine, first of all, the second plea in law, by which the applicant raises a plea of illegality with regard to Articles 12 and 14 of Delegated Regulation 2015/63, and then the first plea relating to the legality of the contested decision.

The second plea in law, raising a plea of illegality with regard to Articles 12 and 14 of Delegated Regulation 2015/63

Admissibility

23 The SRB submits that the second plea is inadmissible for lack of precision, in that the applicant has not specified which provisions of Articles 12 and 14 of Delegated Regulation 2015/63 should be declared inapplicable on the ground that they infringe Article 103(2) and (7) of Directive 2014/59. Furthermore, the legality of Article 12 of that delegated regulation is not relevant in the present case, since that provision is not applicable.

24 The applicant contends that the second plea is admissible.

25 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. Likewise, according to case-law, any plea which is not adequately articulated in the application initiating the proceedings must be held to be inadmissible (see judgment of 7 July 2021, *Bateni* v *Council*, T-455/17, EU:T:2021:411, paragraph 135 and the case-law cited; see also, to that effect, judgment of 30 June 2021, *Italy* v *Commission*, T-265/19, not published, EU:T:2021:392, paragraph 33 and the case-law cited).

26 As regards the lack of clarity of the second plea alleged by the SRB, it should be noted that, in the application, the applicant states that it raises the plea of illegality with regard to Articles 12 and 14 of Delegated Regulation 2015/63 only in the event that the Court, in the examination of the first plea, interprets those articles as not permitting its participation in an IPS in 2018 to be taken into consideration for the purposes of calculating its *ex ante* contribution for the 2019 contribution period.

27 By the first plea, first, the applicant submits that Article 12(2) of Delegated Regulation 2015/63 must be interpreted as permitting its participation in an IPS in 2018 to be taken into account for the purposes of calculating its *ex ante* contribution for the 2019 contribution period. Second, it submits that the reference date for the provision of information for the calculation of the *ex ante* contributions for the 2019 contribution period, which is set at 31 December 2017 by Article 14(1) of that delegated regulation, does not prevent the SRB from taking into account, for that period, its participation in an IPS which took place in 2018.

28 Consequently, it is apparent from an overall reading of the application that the applicant raised the plea of illegality with regard to Article 12(2) and Article 14(1) of Delegated Regulation 2015/63. Moreover, at the hearing, the applicant also confirmed that, by the second plea, it was referring to the illegality of those provisions.

29 As regards the SRB's second argument, according to which the legality of Article 12 of Delegated Regulation 2015/63 is not relevant in the present case, it should be borne in mind that a plea of illegality raised indirectly under Article 277 TFEU when challenging in the main proceedings the legality of another measure, is admissible only if there is a link between the contested measure and the provision forming the subject matter of the plea (judgments of 30 April 2019, *Wattiau* v *Parliament*, T-737/17, EU:T:2019:273, paragraph 56, and of 16 June 2021, *Krajowa Izba Gospodarcza Chłodnictwa i Klimatyzacji* v *Commission*, T-126/19, EU:T:2021:360, paragraph 33).

30 However, Article 277 TFEU must be interpreted sufficiently broadly to enable effective judicial review of the legality of acts of general application adopted by the institutions in favour of persons excluded from direct actions against such acts. Thus, the scope of Article 277 TFEU must extend to acts of the institutions which were relevant to the adoption of the decision forming the subject matter of the action for annulment, in the sense that that decision is essentially based on them, even if those acts did not formally constitute its legal basis. Furthermore, the rules of one single regime cannot, for the purposes of examining the plea of illegality, be artificially separated (see judgment of 16 June 2021, *Krajowa Izba Gospodarcza Chłodnictwa i Klimatyzacji* v *Commission*, T-126/19, EU:T:2021:360, paragraph 34 and the case-law cited).

31 In the present case, the applicant submits that the SRB should have taken into account its participation in an IPS in 2018 for the purposes of calculating its *ex ante* contribution for the 2019 contribution period on the basis of Article 12(2) of Delegated Regulation 2015/63, which the SRB refused to do on the basis of that same provision, since it interpreted it differently.

32 By the plea of illegality raised, the applicant submits that, if the SRB's interpretation of Article 12(2) of Delegated Regulation 2015/63 in the contested decision were correct, that provision would then be unlawful on the ground that it would infringe Article 103(2) and (7) of Directive 2014/59, given that those provisions require the Commission to ensure, when adopting that delegated regulation, that the basic annual contributions are adjusted, in an appropriate manner, to the risk profile of institutions and that the participation of an institution in an IPS is to be taken into account in that adjustment.

33 In those circumstances, it must be held that there is a link between the contested decision and Article 12(2) of Delegated Regulation 2015/63.

34 That is all the more so since the SRB's argument, set out in paragraph 29 above, would, if followed, amount to artificially dividing the rules of the system for calculating *ex ante* contributions established by Delegated Regulation 2015/63 and depriving Article 277 TFEU of its effectiveness.

35 Consequently, the pleas of inadmissibility raised by the SRB against the second plea must be rejected.

Substance

36 By the second plea, the applicant submits that if Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 must be interpreted as meaning that its participation in an IPS in 2018 cannot be taken into account for the purposes of calculating its *ex ante* contribution for the 2019 contribution period, those provisions are then contrary to Article 103(2) and (7) of Directive 2014/59.

37 Given that the applicant raised the present plea of illegality only in the situation referred to in paragraph 36 above, it is necessary to examine, first, whether Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 permit the SRB to take into account an institution's participation in an IPS in 2018 for the purposes of calculating its *ex ante* contribution for the 2019 contribution period. If that is not the case, it must be assessed, as a second step, whether those provisions comply with Article 103(2) and (7) of Directive 2014/59.

– *The scope of Article 12(2) and Article 14(1) of Delegated Regulation 2015/63*

38 Article 12(2) of that delegated regulation states that 'a change of status of an institution, including a small institution, during the contribution period shall not have an effect on the annual contribution to be paid in that particular year'.

39 Under Article 14(1) of Delegated Regulation 2015/63, 'institutions shall provide the resolution authority with the latest approved annual financial statements available before the 31st of December of the year preceding the contribution period, together with the opinion submitted by the statutory auditor or audit firm'.

40 The applicant submits that Article 12(2) of Delegated Regulation 2015/63 must be interpreted as meaning that the participation of an institution in an IPS constitutes a change of status within the meaning of that provision and that a change of that type must be taken into consideration during the contribution period following the period in which that change took place, namely the period during which that institution joined the IPS. Thus, since the applicant began to participate in an IPS in 2018, the SRB should have taken that circumstance into account for the purposes of calculating the applicant's *ex ante* contribution for the 2019 contribution period.

41 Furthermore, contrary to what the SRB maintains, Article 14(1) of Delegated Regulation 2015/63 does not prevent it from taking into account an institution's participation in an IPS that took place in 2018 in order to calculate its *ex ante* contribution for the 2019 contribution period, even if that membership was not effective on 31 December 2017. In any event, that provision cannot be used to undermine compliance with the requirement laid down in Article 103(2) and (7) of Directive 2014/59, namely to adjust the *ex ante* contributions to the risk profile of institutions, in particular as regards their participation in an IPS.

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

43 Article 4(1) of Delegated Regulation 2015/63 provides that the SRB is to calculate the *ex ante* contribution of each institution on the basis of information provided by that institution in accordance with Article 14 of that delegated regulation.

44 First of all, Article 14(1) of Delegated Regulation 2015/63 states that institutions must provide the SRB with the latest approved annual financial statements available by 31 December of the year preceding the contribution period ('year N-1'). Those financial statements must be accompanied by the opinion of the statutory auditor or audit firm.

45 It should be noted that, in view of the duration of the finalisation of such financial statements, the information on the basis of which the SRB calculates the *ex ante* contribution of each institution relates, as a general rule, to the penultimate year preceding the contribution period or, in exceptional circumstances, to an accounting year which began during that penultimate year and was closed in year N-1 (those two periods being referred to as 'reference year N-2').

46 Next, it is apparent from Article 14(2) of Delegated Regulation 2015/63 that institutions must provide the SRB with at least the information referred to in Annex II to that delegated regulation, including the liabilities created by an institution which is a member of an IPS, which are excluded from the calculation of the *ex ante* contributions under Article 5(1)(b) of that delegated regulation.

47 Lastly, Article 14(3) of Delegated Regulation 2015/63 provides that the information referred to in Annex II thereto, which falls within the scope of supervisory reporting requirements, is to be provided to the SRB as reported by the institution concerned in its latest relevant supervisory report that it submitted to the competent authority pertaining to the reference year of the annual financial statements referred to in Article 14(1) of that delegated regulation.

48 Thus, it is apparent from a combined reading of Article 4(1) and Article 14(1) to (3) of Delegated Regulation 2015/63 that it is for the SRB to calculate the *ex ante* contributions on the basis of information relating to the latest approved and certified annual financial statements ('the financial statements') which are available on 31 December of year N-1 (see, to that effect, judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 42), it being understood that that information therefore relates to financial statements which refer to reference year N-2.

49 In that context, it should be clarified that, for the purpose of calculating an institution's *ex ante* contribution, information about its participation in an IPS is closely linked to other information contained in its financial statements. Where the SRB applies, for example, the IPS risk indicator, as provided for in Article 6(5)(b) of Delegated Regulation 2015/63, it must, inter alia, take into account – in accordance with the second subparagraph of Article 7(4) of that delegated regulation – the relative weight of the risk indicator 'trading activities and off-balance sheet exposures, derivatives, complexity and resolvability' provided for in Article 6(5)(a) of that delegated regulation. As the SRB has submitted without being contradicted by the applicant, the information relating to that risk indicator is, as a general rule, included in the financial statements of the institution concerned.

50 Thus, where such an institution participates in an IPS during year N-1, that participation occurs after the closure of the financial statements relating to reference year N-2, which are decisive for the calculation of that institution's *ex ante* contribution, as is apparent from paragraph 45 above. In those circumstances, that participation in an IPS cannot be regarded as information relating to those financial statements. In such a case, it is not for the SRB to take that participation into consideration when it calculates the *ex ante* contribution of that institution for the contribution period concerned.

51 That conclusion cannot be called into question by the applicant's arguments.

52 First, the applicant submits that the SRB is required to take into account an institution's participation in an IPS during year N-1 on the basis of Article 12(2) of Delegated Regulation 2015/63, since such participation constitutes a change of status within the meaning of that provision.

53 Without it being necessary to examine whether an institution's participation in an IPS constitutes a 'change of status' within the meaning of Article 12(2) of Delegated Regulation 2015/63, it is sufficient to note that, in any event, that provision does not require the SRB to take into account a change of that type that occurred during year N-1 for the purposes of calculating the *ex ante* contribution for the contribution period concerned.

54 Article 12(2) of Delegated Regulation 2015/63 merely provides that a change of status of an institution during the contribution period 'shall not have an effect on the [*ex ante*] contribution to be paid in that particular year'. That provision thus states that a change of status is not to be taken into account for the purposes of calculating the *ex ante* contribution due for the same year

in which that change took place, without, however, requiring that that change must necessarily be taken into account for the purposes of calculating the *ex ante* contribution due for the following year.

55 In that regard, first of all, the applicant cannot claim that the use of the words 'that particular year' implies different treatment from the year in which the change of status occurred and the following year.

56 The mere fact that Article 12(2) of Delegated Regulation 2015/63 states that the change of status during the contribution period is to have no effect on the *ex ante* contribution due for that same period does not mean that, *a contrario*, it must be taken into account for the following period.

57 Next, and assuming that the participation of an institution in an IPS constitutes a 'change of status' within the meaning of Article 12(2) of Delegated Regulation 2015/63, it follows from a combined reading of Article 4(1) and Article 14(1) to (3) of that delegated regulation, as has been noted in paragraphs 48 to 50 above, that a participation of that type must be taken into account if it follows from the information relating to the financial statements pertaining to reference year N-2.

58 There is nothing in the wording of Article 12(2) of Delegated Regulation 2015/63 to suggest that that provision lays down a derogation from that rule.

59 In particular, while it is true that, as the applicant observes, Article 14 of Delegated Regulation 2015/63 is part of Section 3 thereof, entitled 'Administrative aspects and penalties', it cannot follow that its scope should be limited to the purely administrative aspects of the system of *ex ante* contributions. On the contrary, given that Article 4(1) of that regulation expressly provides that the SRB must calculate the *ex ante* contributions on the basis of the information provided by the institutions 'in accordance with Article 14 [of Delegated Regulation 2015/63]', that provision is relevant for the calculation of such contributions.

60 Lastly, the applicant's argument that, if Article 12(2) of Delegated Regulation 2015/63 does not permit account to be taken of a change of status during the contribution period following the period in which that change occurred, that provision would become superfluous, cannot succeed.

61 In that regard, it is apparent from the case-law that the purpose of Article 12(2) of Delegated Regulation 2015/63 is, inter alia, to avoid any uncertainty as to the scope of Article 12(1) of that delegated regulation, since it provides for a derogation from the principle that *ex ante* contributions are to be calculated on the basis of the information available on 31 December of year N-1 (judgment of 29 September 2022, *ABLV Bank* v *SRB*, C-202/21 P, EU:C:2022:734, paragraph 61).

62 Thus, Article 12(2) of Delegated Regulation 2015/63 retains its purpose in that it clarifies, in explicit terms, the consequence that can already be inferred implicitly from Article 14(1) of that delegated regulation, namely that a 'change of status' of an institution cannot have an effect on the *ex ante* contribution due for that particular year.

63 It follows from the foregoing that Article 12(2) of Delegated Regulation 2015/63 does not require the SRB to take into account the participation of an institution in an IPS which occurred during year N-1 for the purposes of calculating the *ex ante* contribution.

64 Second, the applicant cannot maintain that such an obligation arises from Article 14(5) of Delegated Regulation 2015/63, which provides that 'where the information or data submitted to the resolution authorities is subject to updates or corrections, such updates or corrections shall be submitted to the resolution authorities without undue delay'.

65 In that regard, it should be noted that the updates referred to in Article 14(5) of Delegated Regulation 2015/63 concern the information or data provided by the institution concerned pursuant to Article 14(1) thereof, which thus relate to reference year N-2. Accordingly, nothing in Article 14(5) of that delegated regulation indicates that the purpose of that provision is to authorise an institution to submit information to the SRB relating to a period other than that covered by the financial statements referred to in Article 14(1) of that same delegated regulation, namely reference year N-2.

66 Third, the applicant cannot rely on Article 17(3) of Delegated Regulation 2015/63 to assert that the SRB is required to take into account information relating to the year N-1.

67 Article 17(3) of Delegated Regulation 2015/63 provides that, 'where the information submitted by the institutions to the resolution authority is subject to restatements or revisions, the resolution authority shall adjust the [*ex ante*] contribution in accordance with the updated information upon the calculation of the [*ex ante*] contribution of that institution for the following contribution period'.

68 It follows, as the SRB submits, that Article 17(3) of Delegated Regulation 2015/63 merely defines the point in time from which the restatements or revisions referred to in that provision produce effects, namely in the following contribution period. By contrast, that provision is not intended to amend the reference date of the information which is relevant for the calculation of the *ex ante* contributions, as established by Article 14(1) of that delegated regulation.

69 Fourth, the applicant submits that the calculation of the *ex ante* contributions must be carried out on the basis of a 'snapshot' of the institutions on 1 January of each financial year, relying on the Opinion of Advocate General Campos Sánchez-Bordona in *State Street Bank International* (C-255/18, EU:C:2019:539, point 71). According to the applicant, its participation in the IPS concerned should therefore be taken into account for the calculation of its *ex ante* contribution for the 2019 contribution period.

70 In that regard, it should be noted that, although Article 14(1) of Delegated Regulation 2015/63 refers to a single date, namely 31 December of year N-1, that reference concerns the availability of the financial statements which are used to calculate the *ex ante* contributions. However, the financial statements available on that date must also be duly approved and certified, which means, as noted in paragraph 45 above, that those financial statements relate to reference year N-2.

71 Furthermore, it is indeed apparent from Article 14(4) of Delegated Regulation 2015/63 that, as the applicant submits, the information which constitutes the basis for calculating the *ex ante* contributions for a contribution period may be provided by the institution concerned by 31 January of the year of the contribution period at the latest. However, that also does not affect the finding, which follows from paragraphs 42 to 50 above, that that information must relate to the financial statements available on 31 December of year N-1 and thus relate to reference year N-2.

72 Fifth, the same conclusion must be reached as regards the applicant's argument that an institution's participation in an IPS is not an accounting figure that can fluctuate. The possible fluctuating or static nature of the information referred to in Article 14(4) of Delegated Regulation 2015/63 is not relevant in the light of the clear wording of Article 14(1) of that delegated regulation, from which it is apparent that the information for calculating the *ex ante* contributions must relate to the financial statements available on 31 December of year N-1 and that it thus relates, as noted in paragraph 45 above, to reference year N-2.

73 In the light of the foregoing, it must be held that Article 14(1) of Delegated Regulation 2015/63 does not require the SRB to take into account an institution's participation in an IPS for the purposes of calculating the *ex ante* contribution during the contribution period following the period during which that participation took place, and indeed does not permit it to do so.

74 That conclusion is confirmed by the objective pursued by the system of *ex ante* contributions, as established by Directive 2014/59 and Regulation No 806/2014, and as is stated in Delegated Regulation 2015/63.

75 As noted in paragraph 48 above, it is for the SRB to calculate the *ex ante* contributions on the basis of information relating to the financial statements available on 31 December of year N-1, which relate to reference year N-2.

76 If the SRB had to take into account all the memberships in an IPS of the institutions concerned during year N-1, the reliability of the *ex ante* contributions' calculation, which is carried out during the following year, could be compromised, since the SRB would be required, inter alia, to make that calculation on the basis of information other than that relating to those duly approved financial statements. The unreliability of that calculation thus risks hindering the attainment of the objective pursued by the system of *ex ante* contributions of achieving, by 31 December 2023 at the latest, at least 1% of the amount of covered deposits of all the institutions authorised in the territory of the Member States participating in the SRM (see, to that effect, judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraphs 41 and 43).

77 Lastly, the taking into account of participation in an IPS during year N-1 affects the consistency of the *ex ante* contributions' calculation and the comparability of the information used for that calculation. Whereas, in accordance with Articles 4 and 14 of Delegated Regulation 2015/63, the SRB takes into account the information relating to reference year N-2 for such a calculation (see paragraph 48 above), it would be required to take into account information relating to another period, namely year N-1, as regards an institution's participation in an IPS which took place during year N-1.

78 In the light of the foregoing, Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 must be interpreted as not permitting the SRB to take into account an institution's participation in an IPS that took place in 2018 for the purposes of calculating its *ex ante* contribution for the 2019 contribution period.

– The legality of Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 in the light of Article 103(2) and (7) of Directive 2014/59

79 By the second plea, the applicant submits that if Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 must be interpreted as meaning that an institution's participation in an IPS that took place in 2018 cannot be taken into account for the purposes of calculating its *ex ante* contribution for the 2019 contribution period, those provisions are then contrary to Article 103(2) and (7) of Directive 2014/59.

80 The second plea is divided into two parts, the first alleging failure to comply with the requirement laid down in Article 103(2) and (7) of Directive 2014/59, according to which the *ex ante* contributions must be adjusted to the risk profile of each institution, and the second alleging infringement of the condition laid down in Article 103(7)(h) of Directive 2014/59, according to which the determination of *ex ante* contributions must take account of the fact that an institution participates in an IPS.

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

82 Since both parts of the present plea are closely related, it is appropriate to examine them together.

83 In that regard, it must be borne in mind that, when specifying the rules for adjustment of the *ex ante* contributions to the risk profile by Delegated Regulation 2015/63, pursuant to the delegation of power provided for in Article 103(7) of Directive 2014/59, the Commission enjoys a broad discretion where it is called upon to undertake complex assessments and evaluations (see, to that effect, judgment of 20 December 2023, *Landesbank Baden-Württemberg* v *SRB*, T-389/21, EU:T:2023:827, paragraphs 105 to 111).

84 That is also the case as regards the Commission's power to determine the reference dates for taking into account information that is relevant for the adjustment of *ex ante* contributions to the risk profile, including the reference date for taking into account an institution's participation in an IPS.

85 First, that determination is an integral part of the method for adjustment of the *ex ante* contributions to the risk profile, which entails, as a whole, complex assessments and evaluations (see, to that effect, judgment of 20 December 2023, *Landesbank Baden-Württemberg* v *SRB*, T-389/21, EU:T:2023:827, paragraphs 105 to 111).

86 Second, Article 103(7)(h) of Directive 2014/59 confines itself to stating that, where the Commission adopts delegated acts to specify the notion of adjusting *ex ante* contributions to the risk profile of institutions, it must take account of the fact that an institution is a member of an IPS, without, however, specifying the point in time at which that fact must be taken into account.

87 In those circumstances, as regards the reference dates of the method of adjusting the *ex ante* contributions pursuant to Article 103(7) of Directive 2014/59 and, in particular, the date on which the participation of an institution in an IPS is taken into account, 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 20 December 2023, *Landesbank Baden-Württemberg* v *SRB*, T-389/21, EU:T:2023:827, paragraph 112).

88 It follows that it is for the applicant to demonstrate that Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 are vitiated by a manifest error of assessment or a misuse of powers or manifestly fail to respect the limits of the Commission's power.

89 In that regard, it should first of all be pointed out that, in Delegated Regulation 2015/63, the Commission did indeed take into consideration institutions' membership in an IPS as an element that was relevant in the context of the adjustment of the *ex ante* contributions to the risk profile of institutions.

90 In particular, in accordance with Article 5(1)(b) of Delegated Regulation 2015/63, certain liabilities created by an institution which is a member of an IPS are excluded from the calculation of the basic annual contributions. In addition, Article 6(5)(b) and Article 7(4)(b) of that delegated regulation take into account an institution's participation in an IPS in order to adjust the basic annual contribution to the institution's risk profile.

91 Next, it is true that, in accordance with Article 14(1) of Delegated Regulation 2015/63, the calculation of *ex ante* contributions takes into account participation in an IPS with a time lag, which corresponds to the period between the reference date of the financial statements referred to in that provision and the date of calculation of the *ex ante* contributions.

92 However, that approach is justified by the need to establish a common date for all the institutions concerned which allows the comparison of the data and information they provide for the purposes of calculating the *ex ante* contributions. First, it is apparent from the considerations set out in paragraph 75 above that such a date is intended, inter alia, to enable the SRB to reliably calculate the *ex ante* contributions on the basis of approved financial statements and therefore to achieve the objective referred to in that paragraph.

93 Second, the time lag referred to in paragraph 91 above is not manifestly inappropriate given that, in accordance with Article 14(1) of Delegated Regulation 2015/63, the SRB takes into account information relating to the latest approved and certified financial statements, with the result that the calculation of the *ex ante* contributions is based on the information relating to the first year for which they are available in an approved and certified form (see paragraph 45 above).

94 Lastly, it should be noted that the applicant has not submitted other evidence to show that Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 were vitiated by a manifest error of assessment or a misuse of powers or manifestly failed to respect the limits of the Commission's power when they determined the point in time at which an institution's participation in an IPS had to be taken into account.

95 Accordingly, the applicant's second plea should be rejected.

The first plea, alleging infringement of Article 12(2) and Article 14(1) of Delegated Regulation 2015/63

96 The applicant submits, in essence, that, by refusing to take into account its participation in the IPS concerned that took place in 2018, for the purposes of calculating the *ex ante* contribution for the 2019 contribution period, the SRB infringed Article 12(2) and Article 14(1) of Delegated Regulation 2015/63.

97 The SRB disputes that line of argument.

98 It should be noted that the applicant's participation in the IPS concerned did not take place during the reference year N-2, namely in 2017, since that IPS was only created in 2018.

99 As is apparent from paragraphs 43 to 78 above, Article 12(2) and Article 14(1) of Delegated Regulation 2015/63 must be interpreted as not permitting the SRB to take into account the applicant's participation in an IPS that occurred in 2018 for the purposes of calculating the *ex ante* contribution for the 2019 contribution period.

100 That conclusion is not called into question by the applicant's argument that its financial statements available on 31 December 2017 contain certain information relating to the creation of the IPS of which it is a member and that the SRB should therefore have taken that information into account for the 2019 contribution period.

101 Under Article 2(1)(8) of Directive 2014/59, the SRB may take into account, for the purposes of calculating the *ex ante* contribution, only those IPSs which have been authorised in accordance with Article 113(7) of Regulation No 575/2013.

102 It should be noted that the establishment of the IPS in question became final only after the Bank of Spain confirmed, in March 2018, that the agreement on the creation of that IPS satisfied the requirements laid down in Article 113(7) of Regulation No 575/2013.

103 In those circumstances, the SRB did not err in law when it did not take into account the applicant's participation in the IPS concerned, which occurred in 2018, for the purposes of calculating the *ex ante* contribution for the 2019 contribution period.

104 Consequently, the first plea must be rejected as unfounded and the action must be dismissed in its entirety.

Costs

105 Under Article 134(1) of the Rules of Procedure, 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 been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the SRB, in accordance with the form of order sought by the SRB.

106 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 (Tenth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Banco Cooperativo Español, SA to bear its own costs and to pay those incurred by the Single Resolution Board (SRB);

3. Orders the European Commission to bear its own costs.

Kornezov Buttigieg Hesse

Petrlík Spangsberg Grønfeldt

Delivered in open court in Luxembourg on 22 January 2025.

[Signatures]