Reports of Cases

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

12 February 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 2018 contribution period – Articles 4, 14 and 16 of Delegated Regulation (EU) 2015/63 – Principle of good administration)

In Case T-406/18,

de Volksbank NV, established in Utrecht (Netherlands), represented by A. Kleinhout, T. Waterbolk, P. Post and M. van Zandvoort, lawyers,

applicant,

v

Single Resolution Board (SRB), represented by D. Ceran and C. De Falco, acting as Agents, and by H.-G. Kamann, F. Louis and P. Gey, lawyers,

defendant,

supported by

European Commission, represented by D. Triantafyllou and A. Steiblytė, 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,

gives the following

* Language of the case: English.

Judgment

1 By its action under Article 263 TFEU, the applicant, de Volksbank NV, seeks the annulment of Decision SRB/ES/2022/46 of the Single Resolution Board (SRB) of 8 August 2022 withdrawing Decision SRB/ES/SRF/2018/03 of the SRB of 12 April 2018 on the 2018 *ex ante* contributions to the Single Resolution Fund in so far as it concerns the institutions mentioned in Annex I to this Decision and on calculating the 2018 *ex ante* contributions to the Single Resolution Fund of these institutions ('the contested decision'), to the extent that it concerns the applicant.

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

2 The applicant, formerly SNS Bank NV, is a credit institution established in the Netherlands.

3 In 2016, the group comprising SNS Bank and its two subsidiaries, ASN Bank NV and RegioBank NV, was restructured, as a result of which, on 31 December 2016, those two subsidiaries were absorbed by SNS Bank; on 1 January 2017, SNS Bank was renamed de Volksbank ('the 2016 merger').

4 The absorption of ASN Bank and RegioBank ('the absorbed subsidiaries') by SNS Bank on 31 December 2016 led to the withdrawal of the banking authorisations of those first two institutions, with the result that, in 2017, the applicant remained the only institution that fell within the scope 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).

5 By Decision SRB/ES/SRF/2018/03 of 12 April 2018, the SRB determined, in accordance with Article 70(2) of Regulation No 806/2014, the *ex ante* contributions to the Single Resolution Fund (SRF) ('the *ex ante* contributions') for 2018 ('the 2018 contribution period') of the institutions covered by Article 2 together with Article 67(4) of that regulation ('the institutions'), which included the applicant.

6 By letter of 23 April 2018, De Nederlandsche Bank NV (DNB, Bank of the Netherlands), in its capacity as the national resolution authority within the meaning of Article 3(1)(3) of Regulation No 806/2014, ordered the applicant to pay its *ex ante* contribution for the 2018 contribution period, as determined by the SRB.

7 On 8 August 2022, the SRB adopted the contested decision. According to Article 1 of the operative part thereof, that decision withdraws the decision referred to in paragraph 5 above ('the initial decision') so far as concerns the institutions mentioned in Annex I to the contested decision. It is apparent from recitals 15 to 18 of the contested decision that it is intended to remedy the failure to state reasons for the initial decision which 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).

Contested decision

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

9 The body of the contested decision sets out the process for determining the *ex ante* contributions for the 2018 contribution period; that process applies to all the institutions.

10 Specifically, in Section 6 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 SRF (OJ 2015 L 15, p. 1), for the 2018 contribution period ('the annual target level').

11 The SRB explained that it had set the annual target level at 1/8th of 1.15% of the average amount of covered deposits, calculated quarterly, of all the institutions in 2017, as 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).

12 In Section 7 of the contested decision, the SRB described the methodology to be used to calculate the *ex ante* contributions for the 2018 contribution period.

13 In Section 7 of the contested decision, the SRB also explained that institutions other than those that paid a lump-sum contribution in view of their smaller size had to pay an *ex ante* contribution adjusted to their risk profile, which had been determined in accordance with the following main stages.

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. For the purposes of that calculation, the SRB first took into account the total liabilities of the institution concerned which included, inter alia, the amounts of own funds and covered deposits ('the total liabilities'), as they stood on 31 December 2016. Next, it subtracted from the total liabilities own funds and the average of that institution's covered deposits in 2016, calculated quarterly, in order to obtain its net liabilities ('the net liabilities'). Lastly, the SRB compared the net liabilities of that institution with the net liabilities of all the institutions authorised in the territories of all the Member States participating in the Single Resolution Mechanism (SRM).

15 As regards the 2018 contribution period specifically, the SRB calculated the net liabilities of the institutions concerned and, accordingly, their basic annual contribution by taking into account the amount of the total liabilities of those institutions on the basis of the data as at 31 December 2016 and by deducting the average amount of the covered deposits, calculated quarterly, of those institutions in 2016.

16 Pursuant to Article 5(1) of Delegated Regulation 2015/63, the SRB deducted certain types of liabilities from the net liabilities of the institution which are to be taken into account in order to determine the basic annual contribution.

17 In the second stage of the calculation of the *ex ante* contribution, the SRB adjusted the basic annual contribution in proportion to 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.

18 Next, the SRB added together all the risk-adjusted basic annual contributions in order to obtain a 'common denominator' used to calculate the share of the annual target level which each institution had to pay.

19 Lastly, the SRB calculated the *ex ante* contribution of each institution by distributing the annual target level among all 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.

Forms of order sought

20 In the application, the applicant claims, in essence, that the Court should:

– annul the initial decision to the extent that it concerns the applicant;

– order the SRB to pay the costs.

21 In the pleading lodged on 26 September 2022, entitled 'Observations regarding the re-adoption of the contested decision in Case T-406/18' ('the pleading of 26 September 2022'), the applicant also requests that its application be regarded as seeking the annulment of the contested decision.

22 The SRB contends, initially, that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– in the further alternative, in the event of annulment, maintain the effects of the initial decision for a period of six months from the date on which the judgment becomes final;

– order the applicant to pay the costs.

23 In its observations regarding the pleading of 26 September 2022, the SRB contends, in addition, that the Court should declare that the action has become devoid of purpose and dismiss it as inadmissible.

24 The European Commission contends that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs.

Law

25 The applicant submits that the SRB infringed several rules of law when it calculated its *ex ante* contribution for the 2018 contribution period and, notably, when it applied the methodology for calculating its basic annual contribution. In particular, the applicant complains that the SRB calculated its net liabilities on the basis of data relating to different dates, since the SRB used data subsequent to the 2016 merger in order to determine the amount of its total liabilities, whereas that board partially used data pre-dating that merger in order to determine the amount of its covered deposits. It maintains that such a methodology thus led to an overstatement of its net liabilities.

26 In support of the action, the applicant puts forward five pleas in law, alleging:

– first, infringement of Article 103(2) 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), of Article 70(2) of Regulation No 806/2014 and of Article 4(1) of Delegated Regulation 2015/63, on the ground that incomparable data was used to determine the applicant's net liabilities;

– second, infringement of Article 103(2) and (7) of Directive 2014/59 and of Article 290 TFEU on the ground that the Commission 'exceeded' its powers;

– third, breach of the principle of proportionality;

– fourth, breach of the principle of legal certainty;

– fifth, breach of the principle of equal treatment.

27 It is appropriate to examine, first of all, the pleas of inadmissibility raised by the SRB, and then the pleas in law put forward by the applicant.

Admissibility

28 In the pleading of 26 September 2022, the applicant submits that, since the contested decision does not resolve the legal issue that was present in the initial decision, namely the use of incomparable data for the calculation of its net liabilities, it was not necessary to modify its application in accordance with Article 86 of the Rules of Procedure of the General Court. However, it requests that the Court, to the extent necessary, consider that application to be directed also against the contested decision.

29 In its observations regarding the pleading of 26 September 2022, the SRB raised, in essence, two pleas of inadmissibility, the first contesting the applicant's claim against the initial decision and the second contesting the pleading of 26 September 2022.

Admissibility of the claim against the initial decision

30 The SRB contends that the claim directed against the initial decision is inadmissible because the application for the annulment of that decision has become devoid of purpose, since the initial decision was withdrawn *ex tunc*.

31 At the hearing, the applicant stated that it would not maintain its claim against the initial decision if the Court were to find that that decision had been withdrawn and replaced by the contested decision.

32 In that regard, it should be noted that recital 18 of the contested decision states that the SRB considered it appropriate to withdraw and replace the initial decision so far as concerned the institutions mentioned in Annex I to the contested decision.

33 Thus, Article 1 of the operative part of the contested decision states that that decision 'withdraws' the initial decision so far as concerns the institutions mentioned in Annex I to the contested decision, the applicant being mentioned in that annex.

34 Next, as is apparent from Article 2 of the operative part of the contested decision, that decision approves the calculation of the *ex ante* contributions for the 2018 contribution period, as carried out in Annex I thereto, that annex providing for the calculation of such a contribution also in respect of the applicant.

35 Lastly, the contested decision was adopted on 8 August 2022 and, in accordance with Article 4 of the operative part of that decision, it took effect as of 12 April 2018, that is to say, when the initial decision took effect.

36 It follows from the foregoing that, as the SRB contends, the initial decision was withdrawn and replaced by the contested decision so far as concerned the applicant.

37 In those circumstances, the applicant must be regarded as having withdrawn, at the hearing, its claim against the initial decision. Accordingly, there is no longer any need to examine the plea of inadmissibility raised by the SRB against that claim.

The modification of the application

38 In its observations regarding the pleading of 26 September 2022, the SRB contends that the applicant has not modified its application, pleas in law or form of order sought in the light of the adoption of the contested decision. First, it maintains that the pleading of 26 September 2022 cannot be regarded as a statement of modification within the meaning of Article 86 of the Rules of Procedure, since it fails to express the applicant's intention to modify its application. Moreover, that pleading is entitled 'Observations regarding the re-adoption of the contested decision in Case T-406/18', and not 'Statement of modification'.

39 Second, it contends that, even if the pleading of 26 September 2022 could be regarded as a statement of modification, it would not satisfy the conditions of admissibility which apply to such pleadings. It argues that, in the pleading of 26 September 2022, the applicant did not unambiguously modify the form of order sought by it in the application, since it failed to classify the pleas raised against the initial decision as pleas directed against the contested decision.

40 In that regard, it is apparent from Article 86(1) and (2) of the Rules of Procedure, in the version then applicable, that, where a measure the annulment of which is sought is replaced or amended by another measure with the same subject matter, the applicant may, before the oral part of the procedure is closed, or before the decision of the Court to rule without an oral part of the procedure, modify its application to take account of that new factor. The modification of the application must be made by a separate document within the time limit laid down in the sixth paragraph of Article 263 TFEU within which the annulment of the measure justifying the modification of the application may be sought.

41 In accordance with Article 86(4)(a) and (b) of the Rules of Procedure, the statement modifying the application must contain, inter alia, the modified form of order sought and, where appropriate, the modified pleas in law and arguments.

42 In that regard, it is apparent from the case-law that, while it is legitimate for a modification of the application to be subject to certain formal requirements, such formal requirements do not apply for their own sake but are, on the contrary, intended to ensure the adversarial nature of proceedings and the sound administration of justice. It would be contrary to the principles of the sound administration of justice and of procedural economy to require an applicant who has modified the form of order sought by him, to repeat in his statement of modification, pleas in law and arguments identical to those advanced against the measure contested initially (see judgment of 24 January 2019, *Haswani* v *Council*, C-313/17 P, EU:C:2019:57, paragraphs 35 and 36 and the case-law cited).

43 Moreover, Article 86 of the Rules of Procedure does not require a specific title in order for a document submitted by an applicant to be regarded as a statement of modification within the meaning of that provision. In order to examine whether such a document constitutes a statement of modification within the meaning of Article 86 of the Rules of Procedure, it is therefore necessary to look to its substance.

44 As regards, in the present case, the pleading of 26 September 2022, first, it should be noted that the applicant states in that pleading that the contested decision withdrew and replaced the initial decision, refers to Article 86 of the Rules of Procedure and requests that the Court consider its application to be directed also against the contested decision.

45 Second, the applicant submitted, in the pleading of 26 September 2022, that the contested decision did not resolve the legal issue raised in the present case and that even the SRB had stated, by letter of 12 May 2022 informing the Court of its intention to withdraw the initial decision, that the contested decision would not affect the substance of the applicant's pleas. Thus, the applicant stated that it did not consider it necessary to modify its pleas, as set out in the application.

46 As has been noted in paragraphs 7 and 32 to 36 above, the contested decision withdrew and replaced the initial decision in order to remedy the failure to state reasons for that decision which the SRB had 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).

47 However, it must be observed that the mere fact of remedying the failure to state reasons for the initial decision has no bearing on the central issue raised by the present action, which concerns the methodology used by the SRB to calculate the applicant's *ex ante* contribution and, more specifically, to determine its net liabilities.

48 In those circumstances, the applicant was entitled not to consider it necessary to modify the pleas in law and arguments relied on in support of its application following the adoption of the contested decision.

49 That is all the more the case since, in the pleading of 26 September 2022, the applicant expressly stated that it wished to fully maintain its application, to the effect that the arguments and pleas in law raised in the application also applied to the contested decision.

50 Accordingly, the pleading of 26 September 2022 constitutes a statement modifying the application which meets the requirements of Article 86 of the Rules of Procedure.

51 In the light of the foregoing, that pleading must be declared admissible and, consequently, it must be held that the action now seeks the annulment of the contested decision to the extent that it concerns the applicant.

Substance

First plea in law, alleging infringement of Article 103(2) of Directive 2014/59, of Article 70(2) of Regulation No 806/2014 and of Article 4(1) of Delegated Regulation 2015/63, on the ground that incomparable data was used to determine the applicant's net liabilities

52 The applicant complains that the SRB used data relating to different dates in order to calculate its net liabilities, in so far as the SRB obtained the amount of its total liabilities on the basis of the data as at 31 December 2016, whereas that board calculated the amount of its covered deposits based on a quarterly average for 2016. It submits that, by adopting such an approach, the SRB infringed Article 103(2) of Directive 2014/59, Article 70(2) of Regulation No 806/2014 and Article 4(1) of Delegated Regulation 2015/63.

53 It maintains that, as a result of the 2016 merger between the applicant and the absorbed subsidiaries, the total liabilities based on the applicant's end-of-year data include the applicant's liabilities as well as the liabilities of those subsidiaries, whereas by using the average amount of the applicant's covered deposits, the SRB did not take into account the covered deposits of those institutions during the first three quarters. It argues that the SRB therefore did not deduct all covered deposits included in the applicant's balance sheet as at 31 December 2016, which is contrary to the rationale of deducting those deposits.

54 In addition, it submits that, by using such a methodology to calculate the applicant's net liabilities, the SRB did not properly assess its factual situation. In particular, the SRB relied on data subsequent to the 2016 merger in order to calculate its total liabilities, thereby also taking into account the liabilities of the absorbed subsidiaries. The applicant maintains that, by contrast, in order to determine the amount of covered deposits, the SRB relied on data which partially pre-dated that merger and which therefore concerned only the applicant's situation and not the situation of those subsidiaries. It argues that such a methodology does not make it possible to reflect the applicant's actual risk profile, in that it led to an overstatement of its size and associated risk.

55 In addition, according to the applicant, the SRB incorrectly claims that its methodology results from the applicable legislation. It submits that that methodology is not prescribed by either Article 4(1) and (2), Article 14(1) and (4), or Article 16 of Delegated Regulation 2015/63.

56 The SRB contends that the applicant's line of argument is unfounded.

57 First, that board maintains that it applied the same methodology for all institutions, with the result that, by its line of argument, the applicant is essentially asking to be treated differently from the other institutions. The SRB argues that such treatment would not be justified.

58 Second, it contends that the methodology for calculating covered deposits, as applied by the contested decision, is in accordance with Articles 4, 5, 14 and 16 of Delegated Regulation 2015/63.

59 Third, it maintains that the applicant fails to identify how the calculation made by the SRB infringed Article 103(2) of Directive 2014/59 or Article 70(2) of Regulation No 806/2014. The applicant's line of argument is based solely on claims derived from abstract principles of consistency and fairness.

60 Fourth, the SRB contends that use of the average amount of covered deposits makes it possible to ensure a more accurate method for calculating *ex ante* contributions than the one based on the total amount of covered deposits at the end of the calendar year.

61 As a preliminary point, it should be recalled that the Commission adopted Delegated Regulation 2015/63 pursuant to a delegation of power granted to it by the EU legislature through Article 103(7) and (8) of Directive 2014/59, in order, inter alia, to specify the notion of adjusting *ex ante* contributions to the risk profile of institutions and the reporting obligations. That delegated regulation was made applicable, by Article 70(6) of Regulation No 806/2014, to the calculation of *ex ante* contributions raised on the basis of that regulation.

62 By the present plea, the applicant contests the first step in the calculation of the *ex ante* contributions and, in particular, the methodology used by the SRB to determine its net liabilities for the purpose of calculating its basic annual contribution.

63 In that regard, it is apparent from recitals 27, 28 and 31 of the contested decision, and from the SRB's statements at the hearing, that, in order to calculate the applicant's net liabilities and, accordingly, its basic annual contribution, the SRB used, first, the amount of the applicant's total liabilities as at 31 December 2016, thereby relying on data subsequent to the 2016 merger, and, second, the average amount of its covered deposits, calculated quarterly, in 2016, that amount therefore being determined on the basis of data which largely pre-dated that merger.

64 The applicant thus maintains that, by using the methodology described in paragraph 63 above, the SRB infringed Article 103(2) of Directive 2014/59, Article 70(2) of Regulation No 806/2014 and Article 4(1) of Delegated Regulation 2015/63. In addition, by claiming that the application of that methodology did not enable the SRB to take proper account of its factual situation and its actual risk profile, it submits, in reality, that the SRB should have applied those provisions in the light of the principle of good administration, which requires bodies of the European Union to examine carefully and impartially all the relevant aspects of the individual case.

65 For the purpose of assessing the merits of that line of argument, it should first of all be recalled that it is apparent from Article 4(1) of Delegated Regulation 2015/63 that it is for the SRB to determine the *ex ante* contribution of each institution on the basis of information provided by the institution in accordance with Article 14 of that delegated regulation.

66 Article 14(1) of Delegated Regulation 2015/63 states that institutions are to provide the SRB with the latest approved annual financial statements which were available, at the latest, on the 31 December of the year preceding the contribution period ('year N-1'). Those financial statements are to be provided together with the opinion submitted by the statutory auditor or audit firm.

67 It must be stated that, in view of the time required in order to finalise such financial statements, that information relates, as a general rule, to the penultimate year preceding the contribution period concerned or, in exceptional circumstances, to an accounting year which began during that penultimate year and was closed during year N-1 (those two periods being referred to as 'reference year N-2').

68 Accordingly, it is apparent from a combined reading of Article 4(1) and Article 14(1) of Delegated Regulation 2015/63 that it is for the SRB to determine the *ex ante* contributions on the basis of information relating to the latest approved and certified annual 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 thus understood that that information relates to financial statements which refer to reference year N-2.

69 In that context, the SRB contends that Article 4(2) and Articles 5 and 16 of Delegated Regulation 2015/63 contain guidance as to the points in time during reference year N-2 that are relevant for the purpose of determining the amount of covered deposits subtracted from total liabilities in the context of calculating the basic annual contribution. More specifically, according to the SRB, it follows from those provisions that such points in time correspond to the ends of the quarters of reference year N-2, with the result that it is for the SRB to take into account, for the purposes of that calculation, the average amount of covered deposits during that year, calculated quarterly.

70 In order to examine the present plea in law, it is not necessary to assess whether Article 4(2) and Articles 5 and 16 of Delegated Regulation 2015/63 allow, or even require, the SRB to take into account such an average amount of covered deposits for the purpose of calculating the basic annual contributions.

71 Indeed, it is apparent from the applicant's written pleadings that it does not necessarily contest the use of the average amount of covered deposits, calculated quarterly, in order to calculate the net liabilities, but rather that it criticises the SRB, above all, for having used data relating to different points in time for the purposes of that calculation.

72 In those circumstances, it is necessary to examine whether, when the SRB takes into account the average amount of covered deposits, calculated quarterly, for reference year N-2 with a view to calculating the net liabilities, it may at the same time take into account, for the purposes of that calculation, the amount of total liabilities, as it stands at the end of reference year N-2, and not the average amount of total liabilities calculated quarterly, it being understood that that amount of total liabilities also includes the amount of covered deposits (see paragraph 14 above).

73 In that regard, it must be observed that neither Article 4(1) nor Article 14(1) of Delegated Regulation 2015/63 contains specific requirements concerning the question whether the SRB is obliged, in determining the net liabilities, to take into account the amount of total liabilities at the end of reference year N-2 or their average amount during that year. Nor are such requirements apparent from any other provision of Delegated Regulation 2015/63, Directive 2014/59 or Regulation No 806/2014.

74 Consequently, it must be held that Article 4(1) and Article 14(1) of Delegated Regulation 2015/63 confer discretion on the SRB as regards the relevant point in time for determining the amount of total liabilities for the purpose of calculating the net liabilities.

75 In order to respect the balance of powers, which is characteristic of the institutional structure of the European Union, such discretion, which has been conferred by the Commission on the SRB, must be clearly defined and its exercise must be subject to strict review in the light of objective criteria arising from the legislation by which the SRB is bound (see, to that effect and by analogy, judgment of 18 June 2024, *Commission* v *SRB*, C-551/22 P, EU:C:2024:520, paragraphs 70 and 72).

76 Thus, it is necessary, inter alia, to ensure that the SRB exercised that discretion in a manner consistent with higher-ranking rules of law and, more specifically, in accordance with the purpose and general scheme of the legal act which constitutes its legal basis, namely Directive 2014/59 (see paragraph 61 above), and with general principles of law, such as the principle of good administration (see, to that effect, judgments of 30 September 2010, *EMI Group*, C-581/08, EU:C:2010:559, paragraph 42; of 26 May 1998, *Costacurta* v *Commission*, T-177/96, EU:T:1998:109, paragraph 45; and of 3 October 2019, *BASF and REACH & colours* v *ECHA*, T-806/17, not published, EU:T:2019:724, paragraph 79).

77 In that regard, first, it should be recalled that the principle of good administration, as enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, imposes on the institutions and bodies of the European Union the duty to examine carefully and impartially all 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; of 9 September 2008, *Bayer CropScience and Others* v *Commission*, T-75/06, EU:T:2008:317, paragraph 84; and of 23 September 2009, *Estonia* v *Commission*, T-263/07, EU:T:2009:351, paragraph 99).

78 Second, the basic annual contribution, as provided for in Article 103(2) of Directive 2014/59 and point (a) of the second subparagraph of Article 70(2) of Regulation No 806/2014, is based on a pro rata amount of the net liabilities of each institution with respect to the net liabilities of the other institutions. Such a ratio thus reflects the general scheme of the *ex ante* contribution system, whereby the basic annual contribution must above all reflect the size of each institution according to its liabilities.

79 That same requirement is apparent from the *travaux préparatoires* relating to Directive 2014/59, and in particular from pages 58 and 59 of the impact assessment of 6 June 2012 accompanying the proposal which led to the adoption of that directive (SWD(2012) 166 final), which state that the calculation of the basic annual contributions according to institutions' liabilities makes it possible to assess the size of those institutions, with the result that that calculation is intended to ensure that large institutions pay higher contributions.

80 The importance of taking that size into account is also highlighted by recital 5 of Delegated Regulation 2015/63, which expressly states that the *ex ante* contribution should reflect the size of the institutions concerned. As is apparent from that recital, the size of an institution represents a first indicator of the risk posed by it, since the larger an institution is, the more likely it is that, in the case of distress, the SRB would consider it in the public interest to resolve that institution and to make use of the SRF to ensure an effective application of the resolution tools.

81 It is in that context that the Court has previously held that the basic annual contribution must reflect the size of the institutions in order to ensure that adequate financial resources are provided for the SRM for the purposes of the efficient application of the resolution tools and that the institutions are encouraged to adopt less risky methods of operation by reducing, inter alia, their net liabilities (see, to that effect, judgment of 20 December 2023, *Banque postale* v *SRB*, T-383/21, EU:T:2023:845, paragraphs 175 and 176).

82 In those circumstances, it is for the SRB to calculate the basic annual contributions in such a way that reflects, in a sufficiently precise manner, the size of the institutions concerned and the associated risk according to their liabilities, so that the institutions with significant liabilities pay higher *ex ante* contributions than the institutions with more limited liabilities – subject to the adjustment of those contributions in the light of the relevant risk indicators – and the institutions are encouraged to adopt less risky methods of operation by reducing, inter alia, the amount of their net liabilities.

83 Although the methodology described in paragraph 63 above may, as a general rule, reflect, in a sufficiently precise manner, the size of the institutions concerned, the situation may be different in certain specific cases that can arise where the total liabilities and covered deposits of a given institution undergo a significant change in the course of reference year N-2, going beyond the normal fluctuations of such liabilities during the year. Such a change may result, inter alia, from an alteration in the structure of that institution, such as that produced following a merger or absorption.

84 Thus, where the SRB is confronted with such a specific situation, it follows from the principle of good administration that it is required to examine carefully and impartially all the relevant aspects of the individual case in the exercise of its discretion referred to in paragraph 74 above.

85 Consequently, where an institution submits to the SRB specific, quantified and verifiable data, from which it is apparent that, as a result of a substantial alteration in its structure in the course of reference year N-2, its total liabilities and the amount of its covered deposits underwent a significant change, with the result that the methodology for calculating the net liabilities no longer reflects its size in a sufficiently precise manner, it is for the SRB to take such aspects into account in order to ensure that the calculation of the net liabilities of the institution concerned complies with the requirements referred to in paragraphs 75 to 82 above.

86 In the present case, first of all, it must be observed that the effect of the 2016 merger between the applicant and the absorbed subsidiaries was that, on 31 December 2016, the amount of the applicant's total liabilities increased significantly, since it included – in contrast to the first three quarters of 2016 – the amounts of the total liabilities and covered deposits of those subsidiaries.

87 Next, in order to calculate the applicant's net liabilities and, therefore, its basic annual contribution, the SRB relied on the methodology described in paragraph 63 above, according to which it used the amount of the applicant's total liabilities on the basis of the data as at

31 December 2016, whereas, in respect of the amount of covered deposits subtracted from the amount of total liabilities, it took into account the average amount of the applicant's covered deposits, calculated quarterly, in 2016.

88 Thus, as regards the covered deposits that were subtracted from the amount of total liabilities in the context of calculating the applicant's net liabilities, the methodology described in paragraph 63 above took the 2016 merger into account only partially. As is apparent from footnote 22 to the contested decision, the SRB added together the four amounts of the covered deposits held by the applicant at the end of each quarter of 2016 and then divided the sum of those amounts by four in order to obtain their quarterly average. Consequently, so far as concerns the first three quarters of 2016, the SRB took into account only the applicant's covered deposits, without including the covered deposits of the absorbed subsidiaries. It was only in respect of the end of the last quarter of that year, following the 2016 merger, that the SRB took into account the amount of the applicant's covered deposits, which also included the amount of covered deposits of those subsidiaries. It follows that the amount of the applicant's covered deposits, which was subtracted from the amount of its total liabilities for the purpose of calculating the net liabilities, consisted of only approximately one quarter of the covered deposits held by those subsidiaries in 2016.

89 By contrast, as regards the determination of the amount of the applicant's total liabilities, the SRB relied solely on the statement of its total liabilities as at 31 December 2016, that is to say, on the amount resulting from the 2016 merger. It therefore did not take into account the amounts of the applicant's total liabilities at the end of the first three quarters of 2016, which did not include the total liabilities of the absorbed subsidiaries. It follows that the amount of the applicant's total liabilities included the entirety of the total liabilities of those subsidiaries, it being understood that that amount also included the entirety of the applicant's covered deposits as at 31 December 2016, including all the covered deposits of those subsidiaries (see paragraph 14 above).

90 It follows from the foregoing that, in the SRB's calculation of the applicant's net liabilities, the first component of that process, namely the calculation of its total liabilities, was based entirely on the applicant's situation following the 2016 merger, whereas the other component of that process, namely the calculation of the amount of its covered deposits, which then had to be subtracted from the total liabilities, was based to a very large extent on the applicant's situation prior to that merger. In those circumstances, and given the extent to which all those liabilities were modified by the 2016 merger, such a calculation of the net liabilities did not reflect, in a sufficiently precise manner, the size of the applicant and, accordingly, the associated risk.

91 It follows that the SRB did not take into account all the relevant aspects of the individual case in the exercise of its discretion referred to in paragraph 74 above, in order to ensure that the calculation of the applicant's net liabilities complied with the requirements referred to in paragraphs 75 to 82 above.

92 Consequently, the SRB exercised its discretion, which it had in the context of calculating the applicant's basic annual contribution, in a manner that infringes Article 4(1) of Delegated Regulation 2015/63, as interpreted in accordance with Article 103(2) of Directive 2014/59 and point (a) of the second subparagraph of Article 70(2) of Regulation No 806/2014 and with the principle of good administration.

93 That conclusion is not called into question by the SRB's line of argument.

94 First, even if, as the SRB claims, it was obliged, under Article 4(1) and (2) and Articles 5 and 16 of Delegated Regulation 2015/63, to take into account the average amount of covered deposits, calculated quarterly, for the purpose of calculating the applicant's net liabilities, those provisions did not require it to take into account data relating to different points in time in the context of that calculation.

95 Second, the SRB cannot justify the application of the methodology set out in paragraph 63 above on grounds of ensuring that the methodology for calculating the net liabilities is consistent with the methodology applicable to the determination of the annual target level.

96 Even if such a consideration were relevant, it was incumbent on the SRB, in the light of the principles recalled in paragraphs 82 to 85 above, to take into account the applicant's specific situation in order to ensure that the calculation of its net liabilities reflected its size in a sufficiently precise manner.

97 Third, the SRB contends that the use of the average amount of covered deposits, calculated quarterly, makes it possible to combat misuse of certain accounting measures, opportunistic behaviour, short-term effects and seasonal peaks.

98 It has not been established how such a circumstance would prevent the SRB from taking into account the average amount of the other categories of liabilities, calculated quarterly, provided that data relating to that amount have been made available to it and the conditions set out in paragraph 85 above have been satisfied.

99 In the light of the foregoing, the first plea in law must be upheld and the contested decision must be annulled to the extent that it concerns the applicant, without there being any need to examine the other pleas in law.

Limitation in time of the effects of the judgment

100 The SRB requests that, in the event that the contested decision is annulled, the Court 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, since the applicant will remain obliged to contribute to the SRF and reimbursement pending the adoption of a new decision would be inappropriate.

101 In that regard, the SRB stated at the hearing that annulment without maintaining in time the effects of the contested decision would risk impairing the proper functioning of Regulation No 806/2014, Directive 2014/59 and Delegated Regulation 2015/63, since it is necessary to take into account not only the amount of the applicant's *ex ante* contribution, but also all the contributions that may be reimbursed by the SRF in similar circumstances.

102 The applicant stated at the hearing that it did not oppose a possible limitation in time of the effects of the contested decision if it were annulled by the Court.

103 Under the second paragraph of Article 264 TFEU, the EU judicature may, if it considers this necessary, state which of the effects of an act which it has declared void are to be considered as definitive. In exercising the power conferred on it by that article, the EU judicature is to have regard to respect for the principle of legal certainty and other public or private interests (see

judgment of 25 February 2021, *Commission* v *Sweden*, C-389/19 P, EU:C:2021:131, paragraph 72 and the case-law cited; see also, to that effect, judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 122).

104 Thus, the second paragraph of Article 264 TFEU has been interpreted, inter alia, as allowing, on grounds of legal certainty, but also on grounds seeking to prevent a lack of continuity or a decline in the implementation of policies conducted or supported by the European Union, the effects of an act declared void to be maintained for a reasonable period (see judgment of 27 January 2021, *Poland* v *Commission*, T-699/17, EU:T:2021:44, paragraph 61 and the case-law cited).

105 As regards, more specifically, the field of collection of *ex ante* contributions, the EU judicature has maintained in time the effects of annulled acts where the reimbursement of such contributions, following that annulment, risked depriving the SRF of the financial means that could prove necessary to ensure the stability of the euro area and the financial stability of the European Union. That could be the case, in particular, if the SRB were required to disburse, in addition to the amount of the *ex ante* contribution of the institution which had brought the action, the amounts of the *ex ante* contributions of other institutions which had brought a similar action, raising the same plea as the one upheld in the action at issue (see, to that effect, judgments 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, and of 10 April 2024, *Dexia* v *SRB (2022* ex ante *contributions)*, T-411/22, under appeal, EU:T:2024:216, paragraphs 70 to 74).

106 In the present case, it must be noted that the amount of the *ex ante* contribution in respect of which the applicant should allegedly be reimbursed for the 2018 contribution period, following the annulment of the contested decision, is limited in scale as compared with the total amount of the financial means available to the SRF.

107 Moreover, when questioned at the hearing, the SRB did not identify any other cases in which institutions other than the applicant had brought a similar action, finding themselves in a situation comparable to the one in the present case and raising the same plea as the one upheld in the present action.

108 Thus, there is nothing to indicate that the SRB will find it necessary to disburse, in addition to the limited amount of the applicant's *ex ante* contribution, the amounts of the *ex ante* contributions of other institutions which have brought a similar action.

109 Consequently, it has not been established that the annulment of the contested decision with immediate effect would risk impairing the stability of the euro area or the financial stability of the European Union.

110 Accordingly, there is no need to grant the SRB's request that the effects of the contested decision be maintained to the extent that it concerns the applicant.

Costs

111 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 SRB has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the applicant, in accordance with the form of order sought by the latter.

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

On those grounds,

THE GENERAL COURT (Tenth Chamber, Extended Composition)

hereby:

1. **Annuls Decision SRB/ES/2022/46 of the Single Resolution Board (SRB) of 8 August 2022 withdrawing Decision SRB/ES/SRF/2018/03 of the SRB of 12 April 2018 on the 2018 *ex ante* contributions to the Single Resolution Fund in so far as it concerns the institutions mentioned in Annex I to this Decision and on calculating the 2018 *ex ante* contributions to the Single Resolution Fund of these institutions, to the extent that it concerns de Volksbank NV;**

2. **Orders the SRB to bear its own costs and to pay those incurred by de Volksbank;**

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

Kornezov Buttigieg Hesse

Petrlík Spangsberg Grønfeldt

Delivered in open court in Luxembourg on 12 February 2025.

T. Henze, Deputy Registrar
Registrar

M. van der Woude
President