Reports of Cases

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

20 January 2021*

(Economic and monetary Union – Banking union – Single resolution mechanism for credit institutions and certain investment firms (SRM) – Single Resolution Fund (SRF) – Setting of the 2015 and 2018 *ex ante* contributions – Rejection of the request for a recalculation and a reimbursement of contributions – Action for annulment – Challengeable act – Admissibility – Institution whose licence has been withdrawn – Article 70(4) of Regulation (EU) No 806/2014 – Concept of 'change of status' – Article 12(2) of Delegated Regulation (EU) 2015/63)

In Case T-758/18,

**ABLV Bank AS,** established in Riga (Latvia), represented by O. Behrends, lawyer,

applicant,

v

**Single Resolution Board (SRB),** represented by J. Kerlin and P. Messina, acting as Agents, and by B. Meyring, S. Schelo, T. Klupsch and S. Ianc, lawyers,

defendant,

supported by

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

intervener,

APPLICATION under Article 263 TFEU seeking annulment of the letter from the SRB of 17 October 2018 by which the SRB rejected the applicant's application for, first, the recalculation of its 2018 *ex ante* contribution and the repayment of the overpayment and, second, the repayment of a portion of its 2015 *ex ante* contribution, following the withdrawal of its licence by the European Central Bank (ECB),

THE GENERAL COURT (Tenth Chamber, Extended Composition),

composed of S. Papasavvas, President, A. Kornezov, E. Buttigieg, K. Kowalik-Bańczyk and G. Hesse (Rapporteur), Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 6 July 2020,

* Language of the case: English.

gives the following

## Judgment

### I. Background to the dispute

1 The applicant, ABLV Bank AS, was an authorised Latvian credit institution until 11 July 2018, when its licence was withdrawn by the European Central Bank (ECB) (see paragraph 11 below). Until that date, it was a 'significant entity' and as such was subject to supervision by the ECB under the Single Monitoring Mechanism (SSM).

2 Pursuant to Article 103 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ 2014 L 173, p. 190 (OJ 2014 L 173, p. 190), the Republic of Latvia is to ensure that contributions are levied annually on institutions which are authorised in its territory.

3 In December 2015, the applicant therefore received a collection notice from the Finanšu un kapitāla tirgus komisija (Financial and Capital Markets Commission, Latvia), informing it of the amount due as its 2015 *ex ante* contribution. The amount due was EUR 1 338 112.40.

4 That contribution, paid by the applicant, was subsequently transferred to the Single Resolution Fund (SRF) in accordance with the Intergovernmental Agreement on the Transfer and Pooling of Contributions to the Single Resolution Fund, signed in Brussels on 21 May 2014 ('the IGA').

5 On 13 February 2018, the United States Department of the Treasury (US Treasury Department, United States of America), through the Financial Crimes Enforcement Network (FinCEN), announced a proposed measure to designate the applicant as an institution of primary money laundering concern, pursuant to Section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act). Following that announcement, the applicant was no longer able to make payments in US dollars and experienced a wave of deposit withdrawals.

6 In addition, the ECB instructed the Financial and Capital Markets Commission to impose a moratorium in order to give the applicant time to stabilise its situation.

7 On 23 February 2018, the ECB found that the applicant was failing or likely to fail within the meaning of Article 18(1) 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 funds 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). On the same day, the Single Resolution Board (SRB) found, in its decision SRB/EES/2018/09, that a resolution action in respect of the applicant was not necessary in the public interest.

8 On 26 February 2018, the applicant's shareholders brought proceedings which would enable the applicant to complete its own liquidation and submitted to the Financial and Capital Markets Commission a request for approval of its voluntary liquidation plan.

9 By Decision SRB/ES/SRF/2018/03 of 12 April 2018 on the calculation of the 2018 *ex ante* contributions, the SRB approved the 2018 *ex ante* contributions.

10 By letter of 27 April 2018, the Financial and Capital Markets Commission informed the applicant that the SRB had adopted its decision on the 2018 *ex ante* contributions and indicated the amount to be paid. The amount of the *ex ante* contribution due by the applicant for 2018 was EUR 1 850 285.83. The applicant paid that amount on 3 July 2018.

11 On 11 July 2018, the ECB adopted a decision to withdraw the applicant's licence, following a proposal from the Financial and Capital Markets Commission.

12 By letter of 17 September 2018, the applicant applied to the SRB for the repayment of a proportion of the contribution paid for the year 2015, the recalculation of the amount of its 2018 *ex ante* contribution and the repayment of the amounts overpaid as *ex ante* contributions.

13 By letter of 17 October 2018 ('the contested decision'), the SRB replied to the applicant. In that letter, the SRB first summarised the applicant's request concerning, first, its 2018 *ex ante* contribution and, secondly, its 2015 *ex ante* contribution. Then, as regards the 2018 *ex ante* contribution, citing the text of Article 70(4) of Regulation No 806/2014 and Article 12(2) of Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59 with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44), the SRB considered that none of the provisions of those two regulations provided for the recalculation or reimbursement requested by the applicant. The SRB stated that, contrary to what the applicant argued in its application, the withdrawal of a credit institution's licence by the ECB was a change of status within the meaning of Article 12(2) of Delegated Regulation 2015/63. It therefore considered that the ECB's decision of 11 July 2018 concerning the applicant had no effect on the annual contribution due by the latter for the year 2018, nor did it require it to recalculate or reimburse part of the contribution in question. Finally, as regards the 2015 *ex ante* contributions, the SRB clarified that the contributions received by the Member States had been transferred to the SRF in accordance with Article 3(3) of the IGA. The SRB considered that entities which had paid *ex ante* contributions for 2015 and whose licence had subsequently been withdrawn did not benefit from a right to reimbursement of those *ex ante* contributions, nor did they benefit from a right to reimbursement of any other *ex ante* contribution duly paid, in accordance with Article 70(4) of Regulation No 806/2014. The SRB concluded, in the light of those elements, that it was not in a position to recalculate the applicant's 2018 *ex ante* contribution, nor to reimburse the remaining balance of the *ex ante* contribution paid for 2015 on the ground that its licence was withdrawn by the ECB.

## II. Procedure and forms of order sought

14 By document lodged at the General Court Registry on 21 December 2018, the applicant brought the present action.

15 By decision of the President of the Eighth Chamber of the General Court of 30 April 2019, the European Commission was granted leave to intervene in support of the form of order sought by the SRB.

16 Following changes to the composition of the General Court, the President of the General Court, by decision of 21 October 2019, reassigned the case to a new Judge-Rapporteur, attached to the Tenth Chamber.

17 By a measure of organisation of procedure of 11 May 2020, the Court invited all of the parties to provide replies to a series of questions.

18 By letters of 4 and 12 June 2020, the Commission and the SRB respectively replied to the questions asked.

19 By letter of 12 June 2020, the applicant also replied to the question put to it by the Court. By letter of 29 June 2020, the applicant submitted its observations on the answers provided by the SRB and the Commission to the second question put by the Court in the context of the measure of organisation of procedure of 11 May 2020.

20 On a proposal from the Tenth Chamber of the General Court, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

21 At the hearing on 6 July 2020, the parties presented oral argument and replied to the Court's questions.

22 The applicant claims that the Court should:

– annul the contested decision;

– order the SRB to bear the costs.

23 The SRB contends that the Court should:

– declare the application inadmissible or, alternatively, dismiss it as unfounded;

– order the applicant to pay all the costs and legal expenses incurred by the SRB.

24 The Commission contends that the Court should:

– dismiss the application as unfounded;

– order the applicant to pay the costs.

## III. Law

### A. Admissibility

25 The SRB submits, principally, that the application is inadmissible in its entirety. In substance, first, it submits that the contested decision does not constitute a challengeable act within the meaning of Article 263 TFEU. The SRB did not exercise a legally prescribed power intended to produce legal effects of such a nature as to affect the interests of the applicant by modifying its legal position. The contested decision is of an informative nature. Secondly, the SRB stated that it doubted whether the applicant fulfilled the condition of direct concern. Thirdly, the SRB considered that the applicant could not seek the annulment of the contested decision for the period prior to the withdrawal of its licence, namely that from 23 February to 11 July 2018, given that its application of 17 September 2018 did not refer to that period.

26 The applicant submits that the contested decision is a negative decision which unequivocally rejects its application. It considers that it is directly concerned by that decision in so far as it is the addressee. Furthermore, the applicant submits that, in the contested decision, the SRB refused any possible recalculation or reimbursement. It therefore considers that it can rely in support of its action both on the period after 23 February 2018, the date of the SRB's decision not to adopt a resolution mechanism, and on the period after 11 July 2018.

27 In the first place, according to consistent case-law, any provisions adopted by the institutions of the European Union, whatever their form, which are intended to have binding legal effects, are regarded as 'challengeable acts', within the meaning of Article 263 TFEU (see judgment of 25 October 2017, *Romania* v *Commission*, C-599/15 P, EU:C:2017:801, paragraph 47 and the case-law cited).

28 A purely informative measure does not constitute a challengeable act within the meaning of Article 263 TFEU (see, to that effect, order of 4 October 2007, *Finland* v *Commission*, C-457/06 P, not published, EU:C:2007:582, paragraph 36).

29 In order to determine whether a measure produces binding legal effects, it is necessary to focus on its substance. Those effects must be assessed on the basis of objective criteria, such as the content of the measure, taking into account, where appropriate, the context in which it was adopted and the powers of the institution which adopted it (see judgment of 25 October 2017, *Slovakia* v *Commission*, C-593/15 P and C 594/15 P, EU:C:2017:800, paragraph 47 and the case-law cited).

30 In the present case, as regards the content of the contested measure, it should be recalled that, by letter of 17 October 2018 addressed to the applicant, the SRB rejected the applicant's request, first, to recalculate its 2018 *ex ante* contribution and to reimburse the overpayment and, secondly, to reimburse part of its 2015 *ex ante* contribution, following the withdrawal of its licence by the ECB.

31 The contested decision makes it clear that the SRB considers that it is not in a position to grant the applicant's requests for recalculation and reimbursement on the ground that they conflict with Article 70(4) of Regulation No 806/2014 and Article 12(2) of Delegated Regulation 2015/63.

32 As regards the 2018 *ex ante* contribution, it is stated that 'no provision [of Regulation No 806/2014 and Delegated Regulation 2015/63] envisages any recalculation or reimbursement in this respect'. With regard to the 2015 *ex ante* contribution, the SRB states that 'institutions which paid ex-ante contributions for 2015 and the authorisation of which has been subsequently withdrawn do not enjoy a right to reimbursement of those contributions, just as they do not enjoy a right to reimbursement of any other duly paid ex-ante contributions' and that 'this follows from Article 70(4) of Regulation (EU) No 806/2014'. The letter concludes as follows: 'In light of the above, the SRB is not in a position to recalculate 2018 ex-ante contributions or reimburse the "remaining" part of 2015 ex-ante contribution due to the withdrawal of ABLV Bank's authorisation by the ECB …'.

33 Therefore, the content of the contested decision is decisive and final. Contrary to what the SRB maintains, its content is not purely informative.

34 As regards the context in which the contested decision was taken, it should be noted that, as a credit institution authorised until 11 July 2018, established in a Member State participating in the Banking Union, the applicant had, in accordance with Directive 2014/59 and Regulation No 806/2014, to contribute to the national resolution fund set up by the Republic of Latvia, and subsequently to the SRF, by way of *ex ante* contributions for the years 2015 to 2018.

35 With regard to the powers of the SRB, it should be noted that it is the only competent authority for the calculation of the *ex ante* contribution of each institution and, where appropriate, the recalculation of those contributions in accordance with Regulation No 806/2014, in particular Article 70(2) thereof, and Delegated Regulation 2015/63 (see, to that effect, judgments of 3 December 2019, *Iccrea Banca*, C-414/18, EU:C:2019:1036, paragraphs 45 to 47, and of 28 November 2019, *Portigon* v *SRB*, T-365/16, EU:T:2019:824, paragraph 71). The SRB is also responsible for the management of the SRF, namely, the resources that have been constituted through *ex ante* contributions (Article 67 of Regulation No 806/2014).

36 In the light of the foregoing, the contested decision is a challengeable act within the meaning of Article 263 TFEU.

37 In the second place, as regards the argument relating to the condition of direct concern, which the SRB waived at the hearing, it must be noted that the applicant is the addressee of the measure whose annulment it seeks. The conditions to which the admissibility of the action is subject under the first limb of the fourth paragraph of Article 263 TFEU are therefore satisfied.

38 In the third place, the SRB submits that certain passages of the application, namely paragraphs 5, 64 and 65 of the application and Annex A.17, can be understood in the sense that the applicant seeks to recover amounts which it attributes to the period from 23 February to 11 July 2018 inclusive. The SRB considers that if and to the extent that the applicant seeks to annul the contested decision for the period from 23 February to 11 July 2018 inclusive, the application must be dismissed as inadmissible.

39 When questioned on that point at the hearing by the Court, the applicant stated that it disputed the contested decision in its entirety and limited itself to seeking its annulment. It pointed out that, in the context of the present dispute, the claim for reimbursement of its 2018 *ex ante* contribution related only to the period following the withdrawal of its licence.

40 In those circumstances, it should be noted that paragraphs 5, 64 and 65 of the application and Annex A.17 are, at most, arguments which the applicant relied on in order to establish that the contested decision was erroneous, as the applicant moreover argued at the hearing. Contrary to what the SRB may have feared, the present action therefore does not seek the recovery of amounts allegedly due in respect of the period from 23 February to 11 July 2018 inclusive.

41 Therefore, plea of inadmissibility raised by the SRB cannot be upheld.

42 Consequently, the present action is admissible.

## B. Substance

43 In support of the action, the applicant relies on 10 pleas in law. By the first three pleas in law, the applicant essentially alleges that the SRB failed to take due account of the pro rata temporis nature of the *ex ante* contributions. The fourth and fifth pleas in law allege a misinterpretation, first, of Article 70(4) of Regulation No 806/2014 and, secondly, of Article 12(2) of Delegated Regulation 2015/63. The sixth plea in law alleges infringement of the principles of legal certainty and of the protection of legitimate expectations. The seventh plea in law alleges infringement of the principle of proportionality. The eighth plea in law alleges infringement of the adage *nemo auditur propriam turpitudinem allegans*. The ninth plea in law alleges infringement of the prohibition on acting in a contradictory manner. The tenth plea in law alleges infringement of the right to property and the freedom to conduct a business.

44 The Court considers it appropriate to analyse the first five pleas in law together. The other pleas in law will be analysed separately, with the exception of the pleas in law alleging infringement of the adage *nemo auditur propriam turpitudinem allegans* and infringement of the prohibition on acting in a contradictory manner, which will be dealt with together and lastly.

### *1. Admissibility of the pleas in law*

45 As regards the admissibility of the pleas in law in the application, the SRB confines itself, in substance, to maintaining, in general, that the applicant's arguments are unclear or insufficiently substantiated.

46 In that regard, it should be recalled that, under Article 76(d) of the Rules of Procedure, an application must state the subject matter of the dispute and a summary of the pleas in law and that that statement must be sufficiently clear and precise to enable the defendant to prepare his or her defence and the Court to exercise its review, if necessary, without further supporting information (judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144, paragraph 191).

47 It should also be recalled that, in particular, for an action before the Court to be admissible, the essential elements of fact and law on which it is based must be apparent, at least summarily but in a coherent and comprehensible manner, from the text of the application itself (judgment of 7 March 2017, *United Parcel Service* v *Commission*, T-194/13, EU:T:2017:144, paragraph 192).

48 In the present case, as is apparent from paragraphs 52 to 56, 132, 140, 155 and 168 below, the arguments put forward by the applicant in the 10 pleas in law which it raises criticise the reply given by the SRB, in the contested decision, to its requests for recalculation and reimbursement, on the ground that it is based on an erroneous interpretation of the applicable provisions.

49 It must be noted, generally speaking and subject to what will be stated later in paragraph 152 below, that the matters of fact and law on which the applicant bases its arguments are intelligible on the basis of the 10 pleas in law in the application. Similarly, it must be noted that the SRB was able, in the defence, to reply to that argument. The Court also had no difficulty in identifying the applicant's arguments on reading the application.

50 It follows from the foregoing considerations that, subject to what will be stated in paragraph 152 below, the applicant's arguments set out in the 10 pleas in law in the application are admissible in the light of the provisions of Article 76(d) of the Rules of Procedure.

51 It follows that all the arguments put forward by the SRB to the effect that the Court should reject the applicant's pleas in law as inadmissible must be rejected.

### *2. The first five pleas in law, alleging failure to have regard to the alleged pro rata temporis nature of ex ante contributions, to Article 70(4) of Regulation No 806/2014 and to Article 12 of Delegated Regulation 2015/63*

52 First, the applicant submits that the *ex ante* contributions are paid pro rata temporis, in that they are paid in advance and for certain specified periods during which the credit institutions benefit from the coverage offered by the European resolution system. First of all, the applicant points out that, having lost its status as a credit institution, it no longer benefits from that cover. The elimination of the risk which the applicant represented and which was covered by the SRF would lead to a proportional reduction in the financing needs of the SRF. The applicant therefore considers that it is entitled to a partial reimbursement of its *ex ante* contributions. Secondly, in its view, the fact that, during the first eight years of the SRF's existence, the *ex ante* contributions for 2015 must be deducted from the annual contributions payable by each credit institution is such as to demonstrate the pro rata temporis nature of those contributions. Finally, the SRB itself acknowledges in Decision SRB/ES/SRF/2018/03 that the contributions are repayable, in so far as it states that if the deduction of the 2015 contributions results in a negative amount, the corresponding amount is paid to the institution during the 2018 contribution period. That decision also refers to the situation where a credit institution loses its licence following a merger. The applicant submits in this regard that in such a case, the sums paid to the SRF are not lost, since the deductions, referred to in Article 8(2) of Council Implementing Regulation (EU) 2015/81 of 19 December 2014 laying down uniform conditions for the application of Regulation No 806/2014 as regards *ex ante* contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1), are granted to the merged entity.

53 Secondly, the applicant submits that the SRB misinterprets Article 70(4) of Regulation No 806/2014, according to which contributions duly received are not reimbursed. It considers that the expression 'duly received' must be interpreted as meaning that any payment has a cause and, consequently, may be repaid if the cause disappears. Its claim for repayment would be, inter alia, based on the principle of prohibition of unjust enrichment. In any event, the applicant submits that Article 70(4) of Regulation No 806/2014 does not apply to *ex ante* contributions for 2015. Those contributions were not 'received' in accordance with Regulation No 806/2014, but were 'received' in the context of the national transposition measure of Directive 2014/59.

54 Thirdly, the applicant considers that the SRB misinterprets Article 12(2) of Delegated Regulation 2015/63. It submits that the wording of that provision refers to the 'status of an institution' rather than to the 'status as an institution'. Article 12(2) of Delegated Regulation 2015/63 presupposes that the entity concerned remains an institution. According to the applicant, Article 12(2) of Delegated Regulation 2015/63 applies in the event that the legal or factual situation of the banking institution is likely to have an impact on the determination of the amount of the contribution, but the bank continues to be included in the resolution financing mechanism. That is not the case for the applicant and therefore that provision does not apply. In support of its arguments, the applicant also relies on Article 7 of Commission Delegated Regulation (EU) 2017/2361 of 14 September 2017 on the final system of contributions to the administrative expenditures of the Single Resolution Board (OJ 2017 L 337, p. 6).

55 Fourthly, the applicant adds, in the reply, that the SRB accepts, in certain circumstances, that recalculations should be made and contributions reimbursed. It submits in that regard that Article 17(3) of Delegated Regulation 2015/63 authorises recalculations and repayments and also invokes Article 17(4) of Delegated Regulation 2015/63.

56 Fifthly, in its observations on the statement in intervention, the applicant submits that the present case differs from that which gave rise to the judgment of 14 November 2019, *State Street Bank International* (C-255/18, EU:C:2019:967). The present case concerns the 'actual elimination' of a credit institution and its deposits, whereas the abovementioned case concerns the absorption of an Italian credit institution by a German credit institution. Thus, according to the applicant, from a European perspective, the merger in the case at issue had no impact on the participation of the contributing institution in the financing of the SRF. Conversely, in the present case, the applicant ceased participating in the financing of the SRF.

57 The SRB, supported by the Commission, disputes those arguments.

### *(a) Setting of the 2018 ex ante contribution*

58 In substance, the applicant submits that the withdrawal of its licence by the ECB during the contribution period, namely the year 2018, is a circumstance which entitles it to a pro rata temporis recalculation of its *ex ante* contribution for that period and, therefore, to the reimbursement of part of the sums paid in respect of its 2018 *ex ante* contribution. The contribution period for that recalculation is from 1 January to 11 July 2018. The overpayment amounts to EUR 947 127.55.

59 According to Article 2 of Regulation No 806/2014, that regulation applies to credit institutions established in a Member State participating in the Banking Union such as the applicant. A credit institution is an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account, in accordance with Article 4(1)(1) 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). Credit institutions must be licenced to carry on their activities as provided for in Article 8(1) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013

on access to the activity of credit institutions and to the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

60 Regulation No 806/2014 requires each authorised institution established in a participating Member State to contribute to the SRF through *ex ante* contributions at least once a year. The individual contribution of each institution is to be calculated pro-rata to the amount of its liabilities (excluding own funds) less covered deposits, with respect to the aggregate liabilities (excluding own funds) less covered deposits, of all of the institutions authorised in the territories of all of the participating Member States (Article 70(1) of Regulation No 806/2014).

61 Furthermore, it follows from Article 69(1) of Regulation No 806/2014 and Article 4(2) of Delegated Regulation 2015/63 that the annual collection of *ex ante* contributions from credit institutions was put in place to ensure that, after an initial period of eight years from 1 January 2016, the available financial means of the SRF reach at least 1% of the amount of covered deposits of all approved credit institutions in all participating Member States.

62 In order to achieve that objective, Article 4(1) and Article 14(1) to (3) of Delegated Regulation 2015/63 require the SRB to calculate the contributions due by reference to the accounting information relating to the latest approved and certified financial statements available as at 31 December of the year preceding the contribution period, accompanied by the opinion issued by the statutory auditor or audit firm.

63 The applicant does not contest that it was, on 1 January 2018, an approved credit institution, established in a participating Member State, and as such had to contribute to the SRF. It does not claim that, by Decision SRB/ES/SRF/2018/03, the SRB erroneously calculated the amount of its individual contribution for 2018. However, it submits that the withdrawal of its licence by the ECB on 11 July 2018 excluded it from the scope of Regulation No 806/2014 as from that date and that, consequently, its *ex ante* contribution for 2018 should be recalculated pro rata temporis.

64 In order to answer the questions of interpretation raised in the context of the present action and to determine the exact scope of Article 70(4) of Regulation No 806/2014 and Article 12 of Delegated Regulation 2015/63, account must be taken not only of the terms of those provisions, but also of their context and the objectives pursued by the legislation of which they form part (see, to that effect, judgment of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41 and the case-law cited).

*(1) The interpretation of Article 70(4) of Regulation No 806/2014*

65 As regards, first, the literal interpretation of Article 70(4) of Regulation No 806/2014, it should be noted that it is worded as follows:

'The duly received contributions of each entity referred to in Article 2 [of that regulation, namely in particular credit institutions such as the applicant] shall not be reimbursed to those entities.'

66 A literal interpretation of Article 70(4) of Regulation No 806/2014 confirms the SRB's position in the contested decision.

67 The wording of Article 70(4) of Regulation No 806/2014 thus emphasises the non-refundable nature of *ex ante* contributions received in due form. The lack of reimbursement results without any room for doubt from the negation used by the legislator. The terms used are unequivocal. No mention is made of the possibility of adjusting *ex ante* contributions on the basis of a monthly calculation when an institution loses its licence during the contribution period.

68 As regards, secondly, the context of Article 70(4) of Regulation No 806/2014, it should be recalled, in the first place, that, in accordance with Article 70(2) of Regulation No 806/2014, each year the SRB must calculate individual contributions to ensure that the contributions payable by all approved institutions in the territory of all participating Member States do not exceed 12.5% of the target level.

69 Therefore, in addition to the target level to be reached at the end of the initial period, there is an annual ceiling on the amount of contributions that can be collected from institutions in a given year during the initial period. Thus, as the SRB rightly points out, the choice of the calendar year as the contribution period for *ex ante* contributions is the consequence of the legislator's desire to ensure that the burden imposed on institutions during the initial period is spread as evenly as possible over time, in accordance with Article 69(2) of Regulation No 806/2014. Contrary to what the applicant argues, the fact that the *ex ante* contributions are annual does not mean that they 'relate' to a particular year with the consequence that an adjustment should necessarily be made when an establishment loses its licence in the course of the year.

70 In the second place, first, it should be noted that *ex ante* contributions to the SRF are collected from financial sector actors prior to and independently of any resolution operation (recital 102 of Regulation No 806/2014). Secondly, resolution instruments can only apply to entities which are failing or likely to fail and only when necessary to achieve the objective of financial stability in the public interest (Article 18(1) of Regulation No 806/2014; see also recital 61 of that regulation). In other words, even if an institution – which has duly paid its *ex ante* contributions – is failing or likely to fail, a resolution measure can only be envisaged if it is necessary in the public interest. There is no automatic link between the payment of the *ex ante* contribution and the resolution of the institution concerned. As the SRB argues, it is only the preservation of the public interest, and not the individual interest of an institution, which is the decisive factor for the use of the SRF (see also Article 67(2) of Regulation No 806/2014). The *ex ante* contribution paid by an institution for a given period does not give it an individual right to use the SRF in the event that that institution fails or is about to fail during that period.

71 The payment of a contribution by an institution to the SRF does not guarantee any consideration, but is intended, in the public interest, to provide the SRF with funds up to the minimum level laid down by the Union legislator with a view to ensuring the stability of the European banking system.

72 It follows from Regulation No 806/2014, in particular from Articles 14, 18, Article 67(2) and Article 70 and recitals 19, 100, 102 and 104 thereof, that the risk covered by the SRF is the risk which the financial sector as a whole poses to the stability of the financial system and, consequently, to national budgets. However, as can be seen from recital 100 of Regulation No 806/2014, the legislator considered that it should be for the financial sector as a whole to finance the stabilisation of the financial system. In the present case, it was as an actor in the financial sector, on 1 January 2018, that the applicant paid its compulsory contribution to the SRF for 2018.

73 That is why the *ex ante* contributions cannot be regarded as insurance premiums which could be paid monthly and reimbursed if the institution which paid them loses its licence in the course of the year, as the applicant claims in support of its arguments. For the same reasons, the argument that an institution which disappears during the year of contribution leads to a reduction in the risks to be covered and, consequently, a reduction in the SRF's financing requirements must be rejected.

74 As regards, thirdly, the objective pursued by Regulation No 806/2014 and Delegated Regulation 2015/63, it should be recalled that the annual collection of *ex ante* contributions from credit institutions was put in place to ensure that, after an initial period of eight years from 1 January 2016, the available financial means of the SRF reach at least 1% of the amount of covered deposits of all authorised credit institutions in all participating Member States (see paragraph 61 above).

75 If the SRB had to take into account the evolution of the legal and financial situation of credit institutions during the contribution period concerned, it would be difficult for it to calculate reliably and stably the contributions due by each of them and to pursue the objective of reaching, at the end of the initial period, at least 1% of the amount of deposits covered by all institutions authorised in the territory of a Member State, since the recalculation of the contributions of a given institution necessarily has repercussions on the amount due by other credit institutions.

76 Having regard to the timing and purpose of the collection of the *ex ante* contributions, it must be noted that, contrary to what the applicant claims, the loss of a licence by an institution during the contribution period does not entitle it to a pro rata temporis recalculation of its *ex ante* contribution for that period and, consequently, to repayment of part of the contribution paid for that period. In conclusion, the SRB did not err in law by interpreting Article 70(4) of Regulation No 806/2014 as not allowing it to recalculate pro rata temporis the applicant's 2018 *ex ante* contribution, nor to reimburse the alleged overpayment.

*(2) The interpretation of Article 12 of Delegated Regulation 2015/63*

77 As regards the applicant's arguments relating to Article 12 of Delegated Regulation 2015/63, it is necessary to note at the outset the terms of that provision:

'1. Where an institution is a newly supervised institution for only part of a contribution period, the partial contribution shall be determined by applying the methodology set out in Section 3 to the amount of its annual contribution calculated during the subsequent contribution period by reference to the number of full months of the contribution period for which the institution is supervised.

2. 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.'

78 In the contested decision, the SRB held that the withdrawal of a credit institution's licence by the ECB was a change of status within the meaning of Article 12(2) of Delegated Regulation 2015/63. The ECB's decision of 11 July 2018 to withdraw the applicant's licence therefore has no effect on the amount of the annual contribution due by the applicant for 2018.

79 The applicant submits, in essence, that the wording of that provision refers to the 'status of an institution' and not to 'status as an institution'. According to the applicant, Article 12(2) of Delegated Regulation 2015/63 presupposes that the entity concerned remains a credit institution and therefore does not apply to its situation. The applicant clarified in its answer of 12 June 2020 to the written question of the Court and confirmed at the hearing that not only Article 12(2) of Delegated Regulation 2015/63 did not apply, but also that Article 12(1) of that regulation was not relevant to the present case.

80 In that regard, in the case giving rise to the judgment of 14 November 2019, *State Street Bank International* (C-255/18, EU:C:2019:967), the Court of Justice held, with respect to the concept of 'change of status' within the meaning of Article 12(2) of Delegated Regulation 2015/63, that the latter must be regarded, for the purposes of the application of that regulation, as an autonomous concept of EU law that had to be interpreted uniformly in all the Member States (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 33).

81 First, the Court of Justice held that the term 'change of status' could cover any kind of change in the legal or factual situation of an institution which may have an effect on the application of Article 12(2) of Delegated Regulation 2015/63. That interpretation is confirmed by the terms 'including a small institution', which indicates that the change in size of an institution, relevant for the purpose of

applying the provisions in favour of small institutions, is only one of the situations covered by that provision (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraphs 35 and 36).

82 Next, the Court of Justice has clarified that Article 12(2) of Delegated Regulation 2015/63 referred, in general, to changes which may affect an institution, while Article 12(1) of that delegated regulation clarified the calculation method which applied, by way of exception, to an institution which had been supervised for only part of the contribution period (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 38). It then considered that Article 12(1) of Delegated Regulation 2015/63, in that it establishes a derogation from the general rule of paragraph 2 of that article, must be strictly interpreted and cannot be given an interpretation going beyond the one scenario expressly envisaged by that regulation (see judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 39 and the case-law cited). The Court of Justice concluded that a transaction which constituted a change of status, within the meaning of Article 12(2) of Delegated Regulation 2015/63, did not benefit from the calculation of the contribution provided for in Article 12(1) of Delegated Regulation 2015/63 (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 40).

83 Finally, the Court of Justice has noted, with regard to Directive 2014/59, Regulation No 806/2014 and Delegated Regulation 2015/63, that the annual collection of *ex ante* contributions from credit institutions had been put in place to ensure that, at the end of the initial period, the target level was achieved. The Court of Justice considered that, in order to enable the resolution authorities to calculate *ex ante* contributions reliably and thus to achieve the objective pursued by Directive 2014/59, Regulation No 806/2014 and Delegated Regulation 2015/63, the concept of 'change of status' provided for in Article 12(2) of that delegated regulation had to be understood broadly (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 44). The Court of Justice held that that concept should be interpreted as including the operation whereby an institution ceases to be subject to the supervision of a resolution authority in the course of a year following a cross-border merger by absorption by its parent company and that, consequently, that operation does not affect the obligation of that institution to pay in full the *ex ante* contributions due in respect of the contribution year in question (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 48).

84 In the present case, for the same reasons as those set out in paragraphs 80 to 83 above, the withdrawal of a credit institution's licence by the ECB must be considered to be a change of status within the meaning of Article 12(2) of Delegated Regulation 2015/63. Indeed, as the Court of Justice pointed out in paragraph 43 of the judgment of 14 November 2019, *State Street Bank International* (C-255/18, EU:C:2019: 967), if a resolution authority, such as the SRB, had to take into account the evolution of the legal and financial situation of institutions during the financial year concerned, it would be difficult for it to reliably calculate the ordinary contributions due in the following year and, consequently, to pursue the objective set out in Regulation No 806/2014 of reaching, at the end of the initial period, at least 1% of the amount of covered deposits of all approved institutions in the participating Member States (see paragraphs 60 to 62 above). Therefore, the concept of 'change of status' provided for in Article 12(2) of Delegated Regulation 2015/63 should be understood as including the cessation of activity of an institution as a result of the loss of its licence during the contribution period.

85 It follows from the above that the fact that an entity ceases to carry on the business of a credit institution during the contribution period, as a result of the withdrawal of its licence, does not affect its obligation to pay the full *ex ante* contribution due in respect of that contribution period. The SRB therefore did not err in that regard in the contested decision. Consequently, the applicant cannot criticise the SRB for not having recalculated pro rata temporis its *ex ante* contribution for 2018 and for not having reimbursed the alleged overpayment.

86 That conclusion is not called into question by the link that the applicant seeks to establish between the concept of 'status' within the meaning of Article 12(2) of Delegated Regulation 2015/63 and that within the meaning of Article 7 of Delegated Regulation 2017/2361. Contrary to what the applicant submits, the concept of 'change of status' cannot be understood as referring solely to the situation in which an establishment moves from one category defined in Article 4(1) of Delegated Regulation 2017/2361 to another. As the Commission rightly points out, the object and purpose of Delegated Regulation 2015/63 and those of Delegated Regulation 2017/2361 are different. The latter concerns the system of contributions to the administrative expenditure of the SRB. The contributions governed by Delegated Regulation 2015/63 are contributions, in the public interest, to the SRF, whereas those governed by Delegated Regulation 2017/2361 cover the workload and corresponding expenditure caused by an entity under the direct responsibility of the SRB (see recital 5 of Delegated Regulation 2017/2361).

87 Admittedly, the applicant submits arguments aimed at differentiating the present case from the one which gave rise to the judgment of 14 November 2019, *State Street Bank International* (C-255/18, EU:C:2019:967). In that respect, it claims that, if there was indeed a 'change of status' in that case, it was because the Italian entity had not left the single resolution mechanism for credit institutions and certain investment firms (SRM), but had become a branch of a German institution. Without disregarding the reality of those differences, it must be noted that they can only remain irrelevant to the conclusion in paragraph 84 above. The term 'change of status' encompasses all kinds of changes in the legal or factual situation of an institution which may have an impact with regard to the application of Article 12(2) of Delegated Regulation 2015/63. The loss of a licence undoubtedly constitutes a change in both the legal and factual situations of a credit institution. Moreover, Article 12(2) of that regulation, which provides that a change in the status of an institution is not to affect the obligation of that institution to pay ordinary annual contributions due for the year in question, refers, in general, to changes which may affect an institution, while Article 12(1) of that regulation clarifies the calculation method which applies, by way of exception, to an institution which has been supervised for only part of the contribution period. Since the latter provision, in that it establishes a derogation from the general rule laid down in Article 12(2) of Delegated Regulation 2015/63, is strictly interpreted and cannot be given an interpretation going beyond the one scenario expressly envisaged by that regulation, the loss of a licence necessarily falls under that Article 12(2).

88 The applicant also considers that, unlike the situation at issue in the case which gave rise to the judgment of 14 November 2019, *State Street Bank International* (C-255/18, EU:C:2019:967), its definitive exclusion from the resolution system affects the target level. In that regard, it is sufficient to note, in the light of the terms used by the legislator in Article 12 of Delegated Regulation 2015/63, that the legislator decided that a change in the status of an institution during the contribution period had no effect on the annual contribution due for the year in question, regardless of the effects that that change in status might have on the deposits covered or the target level.

89 It follows that Article 12(2) of Delegated Regulation 2015/63 applies to the applicant's situation. The applicant's arguments in that respect must therefore be rejected.

90 The other arguments put forward by the applicant, examined below, do not further call into question the above conclusions drawn from the analysis of Article 70(4) of Regulation No 806/2014 and Article 12 of Delegated Regulation 2015/63.

*(3) The other arguments raised by the applicant*

91 The applicant's other arguments seek, in substance, to demonstrate the alleged unjust enrichment of the SRF, the pro rata temporis nature of the *ex ante* contributions and the repayable nature of those contributions. In support of its arguments, the applicant relies on the principle of the prohibition of unjust enrichment, Decision SRB/ES/SRF/2018/03, Article 17(3) and (4) of Delegated Regulation 2015/63 and Article 7(3) of Implementing Regulation 2015/81.

*(i) The alleged unjust enrichment of the SRF*

92 The applicant claims that Article 70(4) of Regulation No 806/2014, in particular the words 'contributions duly received', must be interpreted in the light of the principle of the prohibition of unjust enrichment. According to it, any payment has a reason (*causa*) and serves a purpose and, accordingly, may be reversed if the *causa* falls away or if the purpose is not achieved. That would mean, in the present case, that *ex ante* contributions would have to be recalculated according to the period during which an institution was effectively supervised, failing which the SRF would benefit from unjust enrichment.

93 It should be noted that an action based on unjust enrichment requires, in order to succeed, proof of enrichment without a valid legal basis and of an impoverishment of the claimant linked to that enrichment (see, to that effect, judgment of 28 July 2011, *Agrana Zucker*, C-309/10, EU:C:2011:531, paragraph 53).

94 In the present case, it is common ground that the legal basis for the contested decision was Article 70(4) of Regulation No 806/2014 and Article 12 of Delegated Regulation 2015/63. Moreover, it follows from the findings set out in paragraphs 65 to 76 above that, as the SRB considered in the contested decision, the application of those articles could not result in a recalculation of the applicant's 2018 *ex ante* contribution and, therefore, in the reimbursement of part of the sum paid in respect thereof.

95 It should be noted that the applicant does not call into question the legal basis on which the enrichment of the SRF resulting from the contested decision is allegedly based. The applicant's pleadings do not contain, explicitly or implicitly, any plea of illegality relating to Article 70(4) of Regulation No 806/2014 and Article 12 of Delegated Regulation 2015/63.

96 Consequently, the SRB's refusal to reimburse must be considered to have a valid legal basis and cannot constitute unjust enrichment. In those circumstances, the applicant's argument relating to the alleged unjust enrichment of the SRF must be rejected.

*(ii) The arguments alleging infringement of Decision SRB/ES/SRF/2018/03*

97 The applicant submits that the contested decision infringes Decision SRB/ES/SRF/2018/03, since in the latter the SRB expressly acknowledged the pro rata temporis nature of the *ex ante* contributions and their repayable nature. In particular, the applicant highlights paragraphs 39 and 40 of that decision.

98 In that regard, it should be recalled that, in accordance with settled case-law, a mere practice of an institution, body, office or agency of the Union cannot prevail over the rules of the Treaty or adopted pursuant to the Treaty (see, to that effect, judgments of 23 February 1988, *United Kingdom* v *Council*, 68/86, EU:C:1988:85, paragraph 24, and of 9 August 1994, *France* v *Commission*, C-327/91, EU:C:1994:305, paragraph 36). It follows that a decision of the SRB cannot have the effect of modifying the content of the legislative provisions applicable in the present case.

99 The applicant's arguments seeking to show that the SRB itself acknowledged, in Decision SRB/ES/SRF/2018/03, the pro rata temporis nature or the repayable nature of the *ex ante* contributions are therefore inoperative.

100 In any event, those arguments are also unfounded. It should first be pointed out that, in accordance with Article 103 of Directive 2014/59, the Latvian Resolution Authority fixed and collected the applicant's *ex ante* contribution for 2015. That contribution was transferred to the SRF pursuant to Article 3(3) of the IGA. Secondly, it should be recalled that, in principle, the target level must be reached at the end of an eight-year period. Finally, during that period, two elements condition the

calculation of each institution's individual contribution: first, an annual ceiling (the aggregate amount of collections must not exceed 12.5% of the target level of the SRF per year) and, secondly, the obligation to include in the calculation of individual contributions the contributions collected under Directive 2014/59, by deducting them from the amount due by each institution. In order to comply with that obligation under Article 8(2) of Implementing Regulation 2015/81, the SRB is to take into account the contributions received by participating Member States by deducting them from the amount due by each institution on a linear basis. For example, when calculating its 2018 *ex ante* contribution, one eighth of the amount paid by the applicant for 2015 was deducted from the amount it owed in respect of the 2018 *ex ante* contribution.

101 Therefore, contrary to the applicant's contention, the fact that, according to paragraph 40 of Decision SRB/ES/SRF/2018/03, such a deduction may result in a negative individual contribution and that the corresponding amount is therefore paid to the institution concerned is solely the result of the abovementioned factors. Contrary to what the applicant maintains, that does not concern the SRB's acknowledgement of the pro rata temporis nature of the *ex ante* contributions, nor of their repayable nature (see also paragraph 127 below).

102 Likewise, paragraph 39 of Decision SRB/ES/SRF/2018/03, relied on by the applicant, is not capable of supporting its argument. Admittedly, according to that paragraph, if, during the initial period, an institution loses its banking licence as a result of a merger, the deduction provided for in Article 8(2) of Implementing Regulation 2015/81 is granted to the acquiring institution resulting from the merger. However, in order to do so, paragraph 39 specifies that the acquiring institution must continue to pay *ex ante* contributions to the SRF. That situation is therefore different from that of the applicant in the present case.

103 Consequently, the complaint alleging disregard of that decision must be rejected as inoperative and, in any event, unfounded.

*(iii) The arguments alleging infringement of Article 17 of Delegated Regulation 2015/63*

104 The applicant submits that Article 17(3) and (4) of Delegated Regulation 2015/63 shows that any contribution is subject to subsequent adjustments.

105 First of all, it should be noted that those provisions, on which the applicant relies, are worded as follows:

> '3. Where the information submitted by the institutions to the resolution authority is subject to restatements or revisions, the resolution authority shall adjust the annual contribution in accordance with the updated information upon the calculation of the annual contribution of that institution for the following contribution period.
>
> 4. Any difference between the annual contribution calculated and paid on the basis of the information subject to restatements or revision and the annual contribution which should have been paid following the adjustment of the annual contribution shall be settled in the amount of the annual contribution due for the following contribution period. That adjustment shall be made by decreasing or increasing the contributions to the following contribution period.'

106 Next, it is necessary to recall the context of that provision. Institutions must submit all the information referred to in Article 14 of Delegation Regulation 2015/63 within the time limits laid down in that article. That information concerns the financial year preceding the contribution period. In the present case, the applicant does not allege that the information it submitted under Article 14 of Delegated Regulation 2015/63 for the contribution period 2018 (or any other contribution period) has been subject to subsequent restatement or revision. By contrast, it argues that 'the information submitted

by an institution may be of a preliminary nature', 'where it is not clear that the institution will continue to operate during the year in question, in particular where the institution is considering re-licensing as a bank and ceasing its activities as a credit institution at some point in the year, without the precise date having yet been determined'. It thus infers from Article 17 of Delegated Regulation 2015/63 that any contribution is subject to significant subsequent adjustments, regardless of whether that is due to a change in circumstances compared to the previous year or to a recalculation of a past contribution.

107 That interpretation proposed by the applicant of Article 17 of Delegated Regulation 2015/63 is however not supported by the wording of that provision. The decision of the applicant's shareholders to liquidate it and its consequences are neither equivalent to nor comparable to the accounting restatements or revisions to which the information referred to in Article 14 of Delegated Regulation 2015/63 may be subject. Article 17(3) and (4) of Delegated Regulation 2015/63 states that the updated information is to be taken into account 'for the following contribution period'. That provision therefore does not concern situations, such as that of the applicant, where an institution leaves the resolution system.

108 Finally, a reading of Article 17 of Delegated Regulation 2015/63 in the sense put forward by the applicant is incompatible with Article 70(4) of Regulation No 806/2014 and Article 12(2) of Delegated Regulation 2015/63, as interpreted above.

109 Consequently, the applicant cannot usefully invoke Article 17 of Delegated Regulation 2015/63 either to demonstrate the pro rata temporis nature of the *ex ante* contributions or to support its request for a recalculation of the amount of its *ex ante* contribution for 2018 and reimbursement of part of it. Its argument in that respect must therefore be rejected.

*(iv) The arguments alleging infringement of Article 7(3) of Implementing Regulation 2015/81*

110 The applicant argued, in its observations filed on 29 June 2020 and at the hearing, that it would be anomalous if, pursuant to Article 7(3) of Implementing Regulation 2015/81, the irrevocable payment commitments of an institution which no longer falls within the scope of Regulation No 806/2014 could be cancelled and the securities provided for them could be returned, but that the cash contributions could not be reimbursed.

111 In that regard, it must be noted that specific provisions govern irrevocable payment commitments which, as specified in Article 70(3) of Regulation No 806/2014, may not exceed 30% of the total amount of contributions collected in accordance with that article. Those commitments are of a different nature from *ex ante* contributions, which is why the Union legislator considered it necessary to make them subject to a specific regime. In that respect, the fact that Article 7(3) of Implementing Regulation 2015/81 concerns only such commitments, to the exclusion of *ex ante* contributions, reflects the legislator's wish not to subject the latter to the rule laid down in that provision. There is therefore no need to apply by analogy Article 7(3) of Implementing Regulation 2015/81 to the contributions referred to in Article 70(4) of Regulation No 806/2014, as the applicant essentially submits. Its argument based on Article 7(3) of Implementing Regulation 2015/81 must therefore be rejected.

***(b) Setting of the 2015 ex ante contribution***

112 In substance, the applicant submits that, in so far as, throughout the initial period, the SRB must, when calculating an institution's individual contribution, deduct from the amount owed by that institution the contributions for 2015 fixed and collected by its Member State, the SRB should, where an institution loses its licence during that period, reimburse to it the remaining balance of the *ex ante* contribution which it paid for 2015. The amount of that balance amounts, in the case of the applicant, to EUR 836 320.40.

113 The applicant does not dispute that it had, at the time, to pay the amount fixed by the Financial and Capital Markets Commission. By contrast, it submits that, in so far as one eighth of the amount paid in respect of the 2015 *ex ante* contribution was deducted from each of its annual contributions to the SRF, the contributions for 2015 are in fact 'advance payments for the first eight years of the SRF'. The applicant considers that, since it no longer falls within the scope of Regulation No 806/2014 for the period from 2019 to 2023, as a result of the withdrawal of its licence, the remaining 5/8ths of those 'advance payments' should be reimbursed to it.

114 In the contested decision, the SRB stated that the contributions received by the participating Member States for 2015 had been transferred to the SRF, pursuant to Article 3(3) of the IGA. According to that decision, entities which had paid *ex ante* contributions for 2015 and whose licence was subsequently withdrawn did not enjoy a right to reimbursement of those contributions, as follows from Article 70(4) of Regulation No 806/2014.

115 In that regard, it must be recalled that the creation, in 2015, of the national resolution funds, as provided for by Directive 2014/59 and Delegated Regulation 2015/63, was combined with provision for a Single Resolution Fund, in 2016, common to all Member States forming part of the Banking Union, on the basis of Regulation No 806/2014, seeking progressively to replace the national resolution funds.

116 In that context, as a first step, in accordance with Article 130(1) of Directive 2014/59, Member States had to levy *ex ante* contributions on institutions authorised in their territory as from 1 January 2015. To that end, Member States had to ensure that the obligation to pay the *ex ante* contributions was enforceable under their national law and that the contributions due were paid in full (Article 103(4) of Directive 2014/59).

117 In a second step, the contributions thus received by the Member States before the date of application of the IGA, namely 1 January 2016, were transferred to the SRF, in accordance with Article 3 of that agreement. After their transfer, no distinction is made, within the SRF, between contributions according to the year or legal basis under which they were collected. The contributions for 2015 and subsequent years are put together and mixed in that fund.

118 In the present case, it appears from the file that the contribution for which the applicant seeks partial reimbursement is the *ex ante* contribution which it paid for 2015, the amount of which was fixed by the Latvian Resolution Authority in accordance with Article 103 of Directive 2014/59.

119 On that point, Article 8(2) of Implementing Regulation 2015/81, entitled 'Specific adjustments in the initial period', provides:

'During the initial period, when calculating the individual contributions of each institution, the [SRB] shall take into account the contributions raised by the participating Member States in accordance with Articles 103 and 104 of Directive 2014/59/EU and transferred to the Fund by virtue of Article 3(3) of the [IGA], by deducting them from the amount due from each institution.'

120 It should be noted that neither the wording nor the context of that provision are capable of supporting the applicant's arguments.

121 That provision makes no mention of a right to reimbursement of contributions for 2015 in the event that an institution withdraws from the resolution system during the initial period (2016-2023). Nor does Article 8(2) of Implementing Regulation 2015/81 provide that the contributions for 2015 are 'advance payments for the first eight years of the SRF'.

122 With regard to the context of that provision, the purpose of Implementing Regulation 2015/81 is, as the SRB points out, to specify the methodology for calculating the contributions for each institution (Article 1 of Implementing Regulation 2015/81).

123 That regulation applies to institutions from which contributions are raised in accordance with Article 70 of Regulation No 806/2014 (Article 2 of Implementing Regulation 2015/81). Article 8 of Implementing Regulation 2015/81 details the adjusted method of calculation of the annual contributions which applies by way of derogation during the initial period. Recital 6 of Implementing Regulation 2015/81 specifies in that respect that the purpose of the deduction provided for in Article 8(2) of that regulation is to 'incorporate' the amounts transferred in accordance with Article 3(3) of the IGA into the calculation of individual contributions. When an institution loses its licence, it will no longer have to pay contributions under Article 70 of Regulation No 806/2014 in the future and is therefore no longer concerned by the calculation method set out in Article 8 of Implementing Regulation 2015/81. In that respect, Article 8(2) of Implementing Regulation 2015/81 provides that the deduction shall apply to the 'amount due from each institution'. As the SRB and the Commission rightly point out, that deduction is only made as long as the obligation to contribute exists.

124 Furthermore, recital 12 of the IGA states that the transfer of the 2015 contributions to the SRF was intended to strengthen the financial capacity of the Fund from its inception. The deduction provided for in Article 8(2) of Implementing Regulation 2015/81 thus allows the SRF to have, from the first half of its entry into force, resources equivalent to two annual instalments, while ensuring that the transfer of the sums received in 2015 to that Fund does not create imbalances between the institutions concerned as regards the sharing of the financial burden.

125 Therefore, as the SRB maintains, Article 8(2) of Implementing Regulation 2015/81 reflects the gradual transition from a national mechanism to a single pooled European mechanism and the need to ensure the effectiveness of the SRM as soon as possible.

126 In the light of the foregoing, it is not apparent from any of the relevant texts, in particular Article 8(2) of Implementing Regulation 2015/81, that the contributions for 2015 are, as the applicant submits, 'advance payments for the first eight years of the SRF' and should therefore be reimbursed when an institution falls outside the scope of Regulation No 806/2014.

127 Admittedly, it cannot be ruled out that the calculation of an institution's annual contribution for, for example, 2018 may result, following the deduction of the contribution for 2015, in a negative amount and the payment of the corresponding sum to that institution. However, that is not a reimbursement as understood by the applicant, based on the principle of pro rata temporis. That calculation is nothing more than a mathematical operation carried out to determine the amount of the annual contribution of that institution for 2018, an amount which may be negative if the part of the contribution for 2015 to be deducted is higher than the contribution calculated for 2018. Consequently, the amount paid to the institution, in that hypothesis, only follows from the result of that calculation. In concrete terms, at the time of the collection of the 2018 *ex ante* contributions, the national resolution authority transfers part of the sums collected from the other institutions to the institution(s) whose annual contribution, after deduction of the contribution for 2015, is negative. Consequently, contrary to what the applicant maintains, paragraph 40 of Decision SRB/ES/SRF/2018/03, which refers precisely to that situation, does not corroborate the argument in support of which it seeks partial reimbursement of its 2015 *ex ante* contribution. That is also the case in paragraph 39 of Decision SRB/ES/SRF/2018/03 for the reasons already given in paragraph 98 above.

128 Furthermore, although the amount of the contributions for 2015 was set by the national resolution authorities, in accordance with Directive 2014/59, those contributions are to be considered as contributions to the SRF in the same way as those calculated by the SRB in accordance with Article 70 of Regulation No 806/2014. As noted in paragraph 117 above, the contributions, once

transferred, are put together and mixed in the SRF. Accordingly, it must be considered, in agreement with the SRB in the contested decision, that Article 70(4) of Regulation No 806/2014, under which contributions duly received are not to be reimbursed, applies.

129 Consequently, since the applicant does not dispute that it correctly paid its 2015 *ex ante* contribution, the SRB could, in the light of Article 70(4) of Regulation No 806/2014 and having regard to all the foregoing, consider, as it did, that it was not in a position to make the reimbursement requested.

***(c) Conclusion***

130 It follows from an examination of the first five pleas in law raised by the applicant that the SRB did not err in law by considering that the withdrawal of an institution's licence by the ECB, during the contribution period, was not a circumstance that gave that institution a right to a pro rata temporis recalculation of its *ex ante* contribution for that period and by deciding, therefore, not to reimburse to the applicant part of the sum it had paid as its *ex ante* contribution for 2018. Similarly, the SRB did not err in law by considering that the withdrawal of an institution's licence by the ECB, during the initial period, was not a circumstance that gave that institution a right to reimbursement of the remaining balance of its *ex ante* contribution paid for 2015.

131 In those circumstances, the first five pleas in law raised by the applicant should be rejected.

***3. The sixth plea in law, alleging infringement of the principles of legal certainty and protection of legitimate expectations***

132 In the context of the sixth plea in law, the applicant submits that, in accordance with the principles of legal certainty and the protection of legitimate expectations, the SRB can impose a burden on institutions only if the regulations clearly provide that such a burden is necessary. Furthermore, there is no express provision that contributions may be retained when an entity ceases to be a supervised institution during a contribution period. An impartial and objective observer would not expect contributions to be retained in that way. The applicant therefore criticises the SRB for never having informed the institutions concerned of its interpretation of those regulations.

133 The SRB, supported by the Commission, disputes those arguments.

134 It should be noted that, according to settled case-law, the principle of legal certainty requires that rules must be clear and precise, so that the persons concerned may be able to ascertain unequivocally what their rights and obligations are, and its application foreseeable by those subject to it (see, to that effect, judgments of 14 April 2005, *Belgium* v *Commission*, C-110/03, EU:C:2005:223, paragraph 30, and of 12 December 2013, *Test Claimants in the Franked Investment Income Group Litigation*, C-362/12, EU:C:2013:834, paragraph 44).

135 In addition, the right to rely on the principle of protection of legitimate expectations presupposes the fulfilment of three conditions. First, precise, unconditional and consistent assurances from authorised and reliable sources must have been given to the person concerned by the administration. Secondly, those assurances must be such as to give rise to a legitimate expectation in the mind of the person to whom they are addressed. Thirdly, the assurances given must comply with the applicable standards (see judgment of 9 September 2011, *Deltafina* v *Commission*, T-12/06, EU:T:2011:441, paragraph 190 and the case-law cited).

136 In accordance with Article 70(4) of Regulation No 806/2014, duly received contributions are not to be reimbursed. That provision is clear and precise and does not contain any exception or mitigation. The fact that it does not contain any clarification as to its scope shows that it is universally applicable. It therefore allows individuals to ascertain unequivocally what their rights and obligations are, since its application is foreseeable for them.

137 Contrary to the applicant's contention, the SRB's decision not to reimburse its *ex ante* contributions, which had been duly paid, was not, in the light of the foregoing considerations, unforeseeable. The SRB cannot therefore be criticised for not having previously informed the institutions concerned of its interpretation of the relevant provisions, whether with regard to the contributions paid for 2015 or those paid for each of the years of the initial period.

138 Moreover, the mere fact that Article 70(4) of Regulation No 806/2014 does not expressly state that it applies to the applicant's particular situation does not constitute, within the meaning of the case-law, a precise assurance provided by the administration capable of giving rise to a legitimate expectation that its contributions would be reimbursed to it. Furthermore, a reading of Decision SRB/ES/SRF/2018/03 shows that, contrary to what the applicant claims, the SRB does not acknowledge the repayable nature of the *ex ante* contributions. Even if it did, that would be contrary to the applicable rules and the applicant could not therefore rely on the principle of the protection of legitimate expectations.

139 The sixth plea in law alleging infringement of the principles of legal certainty and of the protection of legitimate expectations must, therefore, be rejected.

### *4. The seventh plea, alleging infringement of the principle of proportionality*

140 The applicant claims, in general, that any measure other than the pro rata temporis reimbursement of the sums paid as *ex ante* contributions to the institution whose licence has been withdrawn is disproportionate. In particular, it considers that the amount of the contributions must be proportionate to the risks associated with the institution concerned. The applicant highlights two situations: first, the situation where the SRB retains the totality of the annual contribution of an institution, even though the latter ceases to be an institution after the first month or the first day of the year; secondly, the situation where the SRB receives contributions almost twice as high because an institution transferred its activities to another entity at the beginning of the year, with the result that it ceases to be an institution while that other entity would become an institution. Furthermore, it believes that placing such a heavy burden on institutions that are likely to be subject to insolvency proceedings, namely, institutions in respect of which the SRB decided not to adopt a resolution measure, aggravates the adverse consequences of their failure.

141 The SRB, supported by the Commission, disputes those arguments.

142 According to settled case-law, the principle of proportionality, which is one of the general principles of EU law, requires that measures adopted by EU institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 165 and the case-law cited).

143 It should be recalled that the objective pursued by the annual collection of *ex ante* contributions from credit institutions, as provided for in Regulation No 806/2014, is to ensure that, after an initial period of eight years, the available financial resources of the SRF reach at least 1% of the amount of covered deposits of all approved credit institutions in all participating Member States.

144 To that end, as noted by the Court of Justice, *ex ante* contributions are 'planned': each year they are calculated with reference to the accounting information regarding the latest approved and certified financial statements available before 31 December of the year preceding the contribution period and are collected in respect of the calendar year in which they are imposed (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraph 63). The only exception concerns institutions that have been newly supervised institutions for only part of the contribution period. In that case, the partial contribution is levied in the following contribution calendar year in addition to the contribution due for that year (Article 12(1) of Delegated Regulation 2015/63).

145 As regards the question whether the contested decision is necessary in order to attain the legitimate objective pursued, it must be noted that a certain stability of the resources of the SRF is essential if they are to be able to increase progressively to 1% of the deposits at the end of the initial period. If the SRB had to take into account the evolution of the legal and financial situation of institutions during the financial year and make reimbursements in the following calendar year of contribution, it would be difficult for the SRF to reach the target level set by Regulation No 806/2014. Moreover, the Court of Justice stressed the importance of facilitating the calculation of annual contributions by the resolution authorities in order to achieve the objective pursued by Directive 2014/59, Regulation No 806/2014 and Delegated Regulation 2015/63 (judgment of 14 November 2019, *State Street Bank International*, C-255/18, EU:C:2019:967, paragraphs 44 and 45). The contested decision is therefore necessary in the light of the legitimate objective pursued.

146 As regards the question whether the contested decision exceeds the limits of what is necessary to achieve that legitimate aim, it must be held, in the light of Article 70(4) of Regulation No 806/2014 and Article 12(2) of Delegated Regulation 2015/63, that there was no alternative which would make it possible to achieve that objective in a less onerous manner. Moreover, an adjustment of the contribution payable by the institution whose licence is withdrawn in the course of the year, as proposed by the applicant, would not be as effective in achieving the objective set out in paragraph 143 above, in so far as it would deprive the SRF of the stability necessary for its resources to be able to increase progressively to the required level.

147 In addition, it should be noted that Article 70(4) of Regulation No 806/2014 and Article 12(2) of Delegated Regulation 2015/63 did not leave any discretion or margin of appreciation as to the reimbursement of contributions duly paid. However, the applicant does not raise any plea of illegality against those provisions.

148 In those circumstances, it must be considered that the contested decision is not disproportionate in that it does not go beyond what is necessary to achieve the legitimate objectives of the legislation in question.

149 That finding is not affected by the applicant's other arguments.

150 As regards the arguments relating to the correlation between the compulsory contributions and the risks covered by the SRF, it should be noted that the rules take into account the risk associated with the activity of an institution when calculating the amount of the contribution (Article 70(2) of Regulation No 806/2014) without establishing a link between that amount and the number of months during which the system incurred such a risk, with the exception of the newly supervised institution. The applicant's arguments in that regard must therefore be rejected.

151 With regard to the situation, invoked by the applicant, where the SRB retains the totality of the annual contribution of an institution, even if the latter ceases to be an institution after the first month or the first day of the year, it should be noted, in the present case, that Decision SRB/ES/SRF/2018/03 was adopted on 12 April 2018, that the Financial and Capital Markets Commission informed the applicant

of the amount of its contribution on 27 April 2018 and that the withdrawal of the applicant's licence took place on 11 July 2018. The situation invoked by the applicant is therefore purely hypothetical and cannot be assessed in the light of the facts of the case. That argument must therefore be rejected.

152 With regard to the situation invoked by the applicant, where the SRB receives contributions almost twice as high because an institution had transferred its activities to another entity at the beginning of the year, with the result that it ceased to be an institution, whereas that other entity subsequently becomes an institution, it should be noted that that argument is not sufficiently substantiated to enable the Court to respond to it. The applicant confines itself to mentioning that situation, which it itself describes as hypothetical, in paragraph 23 of the application, without indicating its relevance to the resolution of the present dispute. However, the calculation of the *ex ante* contributions is based on the data for the previous financial year in accordance with Article 14(1) and (4) of Delegated Regulation 2015/63, in other words, an entity which becomes an institution in 2018 will have its contribution calculated on the basis of the year 2017. The applicant did not provide any information, in particular in the reply, which would make it possible to understand whether its example took account of that provision or of other provisions which might be applicable to such a situation. That argument does not meet the minimum requirements laid down in Article 76 of the Rules of Procedure and must be rejected as inadmissible for lack of specification.

153 As regards the applicant's arguments relating to the adverse consequences of the contested decision for institutions liable to be subject to insolvency proceedings, it should be noted that those arguments are based on the idea that the entity in question would be deprived of an asset in the event of a lack of reimbursement. However, to the extent that *ex ante* contributions are not 'advance payments' and that the loss of a licence by an institution during the contribution year does not give it any right to the reimbursement of its annual contribution, the applicant does not establish that there is an asset of which an entity could be deprived. Accordingly, those arguments must be rejected.

154 In the light of the foregoing, the seventh plea in law, alleging infringement of the principle of proportionality, must be rejected.

### *5. The tenth plea in law, alleging infringement of Articles 16 and 17 of the Charter of Fundamental Rights of the European Union*

155 In the context of the tenth plea in law, the applicant submits that its rights with regard to 'unused *ex ante* contributions' constitute a property right in the same way as cash reserves held in a central bank. That would be particularly evident in relation to the *ex ante* contributions for the first eight years of the SRF's existence. It argues that the deprivation of its property rights was not fixed by law and is not justified by the public interest. The SRB also allegedly did not offer any type of compensation. Furthermore, the retention by the SRB of all the contributions paid, despite the loss by the institution of its licence, constitutes a limitation of the applicant's freedom to conduct a business which is not provided for by law.

156 The SRB, supported by the Commission, disputes those arguments.

157 Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter') provided that 'the freedom to conduct a business in accordance with Union law and national laws and practices is recognised'.

158 Under Article 17(1) and Article 52(1) of the Charter, no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions in accordance with the law, subject to fair compensation being paid in good time for their loss.

159 According to the case-law, fundamental rights, and in particular freedom of enterprise and the right to property, are not absolute prerogatives and their exercise may be subject to restrictions justified by objectives of public interest pursued by the European Union, provided that such restrictions in fact correspond to objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very essence of the rights guaranteed (see judgment of 28 March 2017, *Rosneft*, C-72/15, EU: C:2017:236, paragraph 148 and the case-law cited).

160 For the purposes of determining the scope of that right, account must be taken, having regard to Article 52(3) of the Charter, of Article 1 of Additional Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR') (see, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation* v *Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 356).

161 In that regard, Article 1 of Additional Protocol No 1 to the ECHR provides that:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

162 In the present case, it must be pointed out that the contributions at issue are an interference with the right guaranteed by the first paragraph of Article 1 of Additional Protocol No 1 to the ECHR, since they deprive the establishment concerned of an element of property, namely the sum which it has paid. Such interference is justified in accordance with the second paragraph of that article, which expressly provides for an exception in respect of the payment of taxes or other contributions (see, to that effect, ECtHR, 13 January 2004, *Orion Břeclav s.r.o. v. the Czech Republic*, CE:ECHR:2004:0113DEC004378398).

163 In those circumstances, it must be verified that the contested decision complies with the legislation at issue, that the infringement of the applicant's right to property actually meets objectives of general interest and that that infringement does not constitute, in the light of the aim pursued, a disproportionate and intolerable interference which would undermine the very substance of the right to property.

164 First, it follows from points 58 to 131 above that the SRB rightly applied Article 70(4) of Regulation No 806/2014 and Article 12(2) of Delegated Regulation 2015/63. The contested decision therefore complies with the relevant regulations.

165 Next, it follows from paragraphs 143 to 148 above that the decision not to reimburse the applicant for part of its contributions, despite the withdrawal of its licence, does indeed meet objectives of general interest and is not disproportionate to those objectives. In those circumstances, it must be considered that that decision does not constitute, in the light of the aim pursued, a disproportionate and intolerable interference which undermines the very substance of the applicant's right to property. For the same reasons, that decision does not affect the very substance of its freedom to conduct a business.

166 Therefore, the alleged infringement of the right to property and the freedom to conduct a business is not established.

167 In the light of the foregoing, the tenth plea in law, alleging infringement of Articles 16 and 17 of the Charter, must be rejected.

### *6. The eighth and ninth pleas in law, alleging breach of the adage nemo auditur propriam turpitudinem allegans and of the prohibition on acting in a contradictory manner*

168 In the context of the eighth plea in law, the applicant submits that the SRB infringed the adage *nemo auditur propriam turpitudinem allegans*, according to which no one may take advantage of their own misconduct. In particular, it submits that, on 23 February 2018, the SRB publicly announced that the applicant and its Luxembourg subsidiary were to be liquidated. Following that announcement, the applicant's shareholders were allegedly forced to initiate voluntary liquidation proceedings. That voluntary liquidation then prompted the ECB to revoke the applicant's licence. Consequently, first, the SRB deprived the applicant of the benefit it derived from its *ex ante* contribution paid to the SRF for 2018. Secondly, the SRB obtained an advantage in that it received a contribution even though the corresponding risk had been eliminated as a result of the liquidation of the applicant. By refusing to reimburse the applicant's *ex ante* contribution, the SRB attempts to retain an unlawful advantage. The applicant also submits, in the context of the ninth plea in law, that by ordering the liquidation of the applicant while retaining its contribution, the SRB engaged in arbitrary and contradictory conduct.

169 The SRB, supported by the Commission, disputes those arguments.

170 First, in order to invoke the adage *nemo auditur propriam turpitudinem allegans*, it is still necessary to establish that wrongful conduct attributable to the SRB has been committed. An analysis of the first five pleas in law shows that the SRB was right to apply Article 70(4) of Regulation No 806/2014 and Article 12(2) of Delegated Regulation 2015/63. No wrongful conduct can therefore be imputed to it in the present case.

171 As for the SRB's decision of 23 February 2018 not to adopt a resolution mechanism and the question as to whether the SRB is responsible for the voluntary liquidation procedure initiated by the applicant's shareholders, they are not the subject of the present action and therefore cannot be used as a basis for alleged wrongful conduct.

172 Secondly, it should be noted that the plea alleging contradictory conduct on the part of the SRB is based on the SRB's decision of 23 February 2018 not to adopt a resolution mechanism and on the question of whether the SRB is responsible for the voluntary liquidation procedure initiated by the applicant's shareholders. However, such a plea, which does not seek to call into question the legality of the contested decision, is inoperative and must be rejected.

173 Consequently, the eighth and ninth pleas in law must be rejected.

### *7. The insufficient statement of reasons in the contested decision*

174 In paragraph 92 of its observations filed on 29 June 2020, the applicant submits that the SRB gave insufficient reasons for the contested decision. It considers that, in that decision, the SRB merely maintained that the contributions to the SRF were never reimbursed without providing a plausible explanation for its refusal to carry out a recalculation and to grant the reimbursement requested. The applicant points out that the SRB did not provide, in its decision, reasons why 'the 2015 contributions may be reimbursed if small additional amounts were payable in the initial phase, but would not have to be reimbursed if no further amounts were payable'.

175 According to settled case-law, pleas alleging that a statement of reasons is lacking or inadequate constitute a matter of public interest and may be put forward by the parties at any stage in the proceedings (order of 25 July 2000, *RJB Mining* v *Commission*, T-110/98, EU:T:2000:199, paragraph 46; see also, to that effect, judgment of 20 February 1997, *Commission* v *Daffix*, C-166/95 P, EU:C:1997:73, paragraphs 23 to 25). The present plea in law is therefore admissible.

176 Furthermore, it should be noted that the statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court of the European Union to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question of whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 63, and of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 87).

177 It follows that a statement of reasons does not have to be exhaustive, but must be considered as sufficient if it sets out the facts and legal considerations of fundamental importance in the context of the decision (see, to that effect, judgments of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 169, and of 3 March 2010, *Freistaat Sachsen* v *Commission*, T-102/07 and T-120/07, EU:T:2010:62, point 180).

178 In the present case, it is apparent from the description of the contested decision set out in paragraph 13 above that the SRB specified the essential elements of fact and law. The contested decision enabled, first, the applicant to know the reasons for the decision taken in order to defend its rights and, secondly, the EU Courts to exercise their review of the legality of that decision. The applicant was able to challenge the merits of the assessments contained in the contested decision by criticising, in particular, the SRB for its interpretation of Article 70(4) of Regulation No 806/2014 and the application to its situation of Article 12(2) of Delegated Regulation 2015/63, as shown in the application. Moreover, as can be seen from the above analysis of the various pleas in law raised in the application, the Court was able to rule on those arguments and exercise its review over the contested decision. Consequently, the applicant is wrong to allege that the statement of reasons for that decision is inadequate.

179 The SRB cannot be criticised for not providing reasons why 'the 2015 contributions may be reimbursed if small additional amounts were payable during the initial phase, but would not have to be reimbursed if no further amounts were payable'. The SRB clearly explained in its decision the reasons why it could not satisfy the applicant's requests, as can be seen from paragraph 13 above. Furthermore, it follows from the analysis of the first five pleas in law above that, contrary to what the applicant maintains, the SRB never stated that 'the contributions for 2015 could be reimbursed', but argued that they could be deducted from the amount owed by the institution, in accordance with Article 8(2) of Implementing Regulation 2015/81. That argument of the applicant must therefore be rejected.

180 In the light of all the foregoing, the plea alleging that insufficient reasons were given for the contested decision must therefore be rejected and, consequently, the action as a whole must be dismissed.

## Costs

181 Pursuant to Article 134(1) of the Rules of Procedure, any 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, it should be ordered to pay the costs in accordance with the form of order sought by the SRB.

182 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 ABLV Bank AS to pay, in addition to its own costs, the costs incurred by the Single Resolution Board (SRB);**

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

Papasavvas Kornezov Buttigieg

Kowalik-Bańczyk Hesse

Delivered in open court in Luxembourg on 20 January 2021.

E. Coulon
Registrar

S. Papasavvas
President