



Press and Information

General Court of the European Union

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Judgments in Cases T-411/17 Landesbank Baden-Württemberg v Conseil de résolution unique (CRU), T-414/17 Hypo Vorarlberg Bank AG v CRU et T-420/17 Portigon AG v CRU

The General Court annuls the decision of the Single Resolution Board on the calculation of the 2017 *ex-ante* contributions to the Single Resolution Fund and declares that Delegated Regulation 2015/63 is unlawful in part

The decision is not adequately authenticated and does not state adequate reasons. The calculation of the contributions of Landesbank Baden-Württemberg, Hypo Vorarlberg Bank and Portigon is inherently opaque.

The Single Resolution Board (SRB), an EU agency established in the context of the Single Resolution Mechanism (SRM) of the Banking Union, sets annually the *ex ante* contributions of approximately 3 500 financial institutions to the Single Resolution Fund (SRF) established by Regulation No 806/2014.¹ Those contributions are raised from those institutions by the national resolution authorities and transferred to the SRF.²

By decision of 11 April 2017,³ the SRB set the 2017 *ex ante* contributions to the SRF in respect of those institutions, including Landesbank Baden-Württemberg (Germany), Hypo Vorarlberg Bank AG (Austria) and Portigon AG (Germany). The latter were informed of the amount of their contributions by assessment notices sent to them by the competent national resolution authorities.

Each of the three institutions brought an action for annulment of the SRB's decision before the General Court of the European Union.

By its judgments delivered today, the Court annuls the SRB's decision in so far as it concerns Landesbank Baden-Württemberg, Hypo Vorarlberg Bank and Portigon.

The Court finds, first of all, that, although the decisions of the SRB on the calculation of the *ex ante* contributions to the SRF are addressed, in accordance with the applicable legislation, to the national resolution authorities, those decisions are, unquestionably, of direct and individual concern to the institutions which owe those contributions. It follows that Landesbank Baden-Württemberg, Hypo Vorarlberg Bank and Portigon have standing to bring an action for annulment of the SRB's decision.

The Court next raises, of its own motion, that **the SRB did not produce any evidence of the authenticity of the annex to its decision**. That annex is an electronic document **containing the amounts of the *ex ante* contributions** and therefore constitutes an essential component of that decision. The SRB did not, however, send any electronically signed version of the annex to the decision, even though that annex is in no way inextricably linked to the text of the decision signed by hand by the president of the SRB. **The SRB's decision is therefore not adequately authenticated.**

¹ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

² In accordance with the intergovernmental agreement on the transfer and mutualisation of contributions to the SRF, signed in Brussels on 21 May 2014.

³ Decision of the Executive Session of the SRB of 11 April 2017 on the calculation of the 2017 *ex-ante* contributions to the Single Resolution Fund (SRB/ES/SRF/2017/05).

What is more, the Court holds that **the SRB's decision does not contain an adequate statement of reasons.**

The statement of reasons given to each of the applicant institutions does not contain any calculation factors specific to the other (approximately) 3 500 institutions, even though the calculation of its contribution involves, first, a pro-rata calculation of the amount of its liabilities (excluding own funds and covered deposits), with respect to the total liabilities (excluding own funds and covered deposits) of all of the other institutions, and, second, an assessment of its risk profile as compared with the risk profiles of those other institutions in accordance with the indicators set out in the legislation.

In response to an argument raised by the SRB, the Court states that it does not call into question the confidential nature of the data of the other (approximately) 3 500 institutions, but notes that, to the extent that it is based interdependently on those data, **the calculation of the contributions of Landesbank Baden-Württemberg, Hypo Vorarlberg Bank and Portigon is inherently opaque. The statement of reasons given to those institutions does not enable them to verify the amount of their contributions, although that is the essential part of the SRB's decision relating to them. It puts those institutions in a position where they cannot know whether that amount has been calculated correctly or whether they should dispute the amount before the Court** without however being able, as they are nonetheless required to do in the context of a legal challenge, to identify, with regard to that amount, the impugned elements of the SRB's decision, to formulate grounds of challenge in that regard and to adduce evidence – direct or circumstantial – to demonstrate that their objections are well founded.

In its judgment on the action brought by Landesbank Baden-Württemberg, the Court adds that the infringement of the obligation to state reasons stems, in respect of the part of the calculation of the *ex ante* contribution relating to the risk adjustment, from the partly illegal nature of Delegated Regulation 2015/63,⁴ legitimately alleged by Landesbank Baden-Württemberg by means of a plea in law.

Given that the SRB cannot adopt a new decision without again infringing the obligation to state reasons and the right of Landesbank Baden-Württemberg to effective judicial protection until the legal framework, in particular Delegated Regulation 2015/63, is amended, the Court maintains the effects of the SRB's decision in so far it concerns Landesbank Baden-Württemberg for six months from the day on which the judgment on the action brought by that institution becomes final.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments ([T-411/17](#), [T-414/17](#) and [T-420/17](#)) is published on the CURIA website on the day of delivery

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⁴ Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).