COURT OF JUSTICE
OF THE EUROPEAN UNION

PRESS RELEASE No 88/24
Luxembourg, 29 May 2024

Judgment of the General Court in Case T-395/22 | Hypo Vorarlberg Bank v SRB (2022 ex-ante contributions)

The General Court of the European Union finds that the calculation of the 2022 *ex-ante* contributions to the Single Resolution Fund (SRF) is unlawful

The Single Resolution Board (SRB) exceeded, as the General Court already found in a previous judgment, an annual upper limit that it should have observed and, in addition, relied on unlawful provisions of law

The Austrian credit institution Hypo Vorarlberg Bank has challenged before the General Court of the European Union the lawfulness of the SRB's decision [1] setting the 2022 *ex-ante* contributions [2] to the SRF, in so far as that decision concerns Hypo Vorarlberg Bank.

According to Hypo Vorarlberg Bank, that decision is unlawful because it is based on provisions of law that are, in turn, unlawful. In addition, the SRB exceeded, in the contested decision, an annual upper limit that it should have observed.

By its judgment, **the General Court upholds Hypo Vorarlberg Bank's action and annuls the contested decision in so far as it concerns Hypo Vorarlberg Bank, while provisionally maintaining its effects**.

First, the contested decision is, as Hypo Vorarlberg Bank argues, **based on provisions of law that are unlawful and, consequently, inapplicable in the case at hand**.

For the purpose of calculating the 2022 *ex-ante* contributions, the SRB applied an implementing regulation of the Council of the European Union ('the Council') [3] that is unlawful in its entirety because it was adopted on an enabling legal basis [4] that is also unlawful. That latter unlawfulness stems from the fact that the EU legislature, namely the European Parliament and the Council, failed to comply with its obligation to state the reasons why it empowered the Council, rather than the European Commission, to adopt the implementing act in question.

In addition, the Council exceeded, in its implementing regulation, the implementing powers conferred on it by altering the actual basis of the method of calculating *ex-ante* contributions to the SRF provided for in the enabling legislative act. [5] According to that method, the calculation of the *ex-ante* contribution for each institution is to be based, inter alia, on a basic annual contribution the calculation of which is to take into account the data of all the institutions authorised in the territories of all the participating Member States. However, the Council introduced, in its implementing regulation, an adjusted method of calculation according to which, during almost the whole of the initial period (2016 to 2023), part of the basic annual contributions was to be calculated using a national database.

Secondly, as the General Court had already found in its judgment in Dexia v SRB (2022 *ex-ante* contributions) [6], **the SRB failed to observe the requirement that the amount of the *ex-ante* contributions due by all the authorised institutions does not exceed 12.5% of the forecast final target level** [7]. It had forecast the final target level at €79 987 450 580. Thus, when it calculated the 2022 *ex-ante* contributions, it had to ensure that the amount of the *ex-ante* contributions due by all the authorised institutions did not exceed 12.5% of that amount, namely the

amount of €9 998 431 322.50. However, it set the annual target level for 2022 at €14 253 573 821.46 (an amount which was then reduced to €13 675 366 302.18 after certain deductions).

Nevertheless, the General Court considers it necessary to maintain the effects of the contested decision, in so far as it concerns Hypo Vorarlberg Bank, until the necessary measures have been taken to implement its judgment, which must occur within a reasonable period that cannot exceed 12 months from the date on which that judgment becomes final.

If the SRB were required to repay, with immediate effect, the amount of Hypo Vorarlberg Bank's *ex-ante* contribution (as well as the amounts of the *ex-ante* contributions of other institutions, such as those which have brought a similar action raising the same arguments as Hypo Vorarlberg Bank, whereas they remain in principle subject to the obligation to pay *ex-ante* contributions), that would risk depriving the SRF of the financial means that may prove necessary to ensure the stability of the euro area and the financial stability of the Union.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU 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.

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.

The full text and, as the case may be, an abstract of the judgment are published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355.

[1] Decision SRB/ES/2022/18 of the Single Resolution Board (SRB) of 11 April 2022 on the calculation of the 2022 ex ante contributions to the Single Resolution Fund (SRF).

[2] One of the purposes of collecting ex ante contributions is to ensure, according to an insurance-based logic, that the financial sector provides adequate financial resources for the Single resolution mechanism for credit institutions and certain investment firms (SRM) to be able to fulfil its functions. One of the objectives of the SRM is, in turn, to increase the stability of institutions in participating Member States and to prevent the spill over of any crises into non-participating Member States.

[3] Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation No 806/2014 with regard to ex ante contributions to the Single Resolution Fund.

[4] Article 70(7) of Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund.

[5] It follows that Article 8(1)(g) of Implementing Regulation 2015/81 is inapplicable in the case at hand.

[6] See judgment of 10 April 2024, Dexia v SRB (2022 ex-ante contributions), T-411/22; see also Press Release No 62/24.

[7] For each contribution period, the SRB must estimate, as precisely as possible, the final target level in the light of the data available at the time when the estimate is made.