COURT OF JUSTICE
OF THE EUROPEAN UNION

Opinions of the Advocate General at the Court Dean Spielmann in Cases C-454/24 P | SRB v Dexia SA, C-529/24 P | Council v Hypo Vorarlberg Bank AG, C-536/24 P | SRB v Hypo Vorarlberg Bank AG, C-537/24 P | SRB v Volkskreditbank SA, C-585/24 P | Council v Volkskreditbank AG and C-705/24 P | SRB v BAWAG P.S.K.

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Advocate General Spielmann: the decisions determining the calculation of the 2022 and 2023 *ex ante* contributions to the Single Resolution Fund are vitiated by errors of law

Following the 2008 financial crisis, the European Union created the Banking Union in order to strengthen the stability of the financial system. The Single Resolution Mechanism (SRM), established by Regulation (EU) No 806/2014, [1] is one of its main pillars. It aims to enable the orderly resolution of failing credit institutions, while limiting the impact on financial stability and the use of taxpayers' money. The Single Resolution Board (SRB) is the authority responsible for implementing that mechanism. Resolution measures are financed, inter alia, by the Single Resolution Fund (SRF), which is fed by *ex-ante* contributions paid each year by participating credit institutions. The methodology for the calculation of those contributions is laid down in particular by Implementing Regulation (EU) 2015/81. [2] The SRF was to be established during an initial period of eight years, from 1 January 2016 to 31 December 2023, at the end of which its financial means were to reach at least 1% of the amount of covered deposits of all of the credit institutions authorised in all of the participating Member States (the target level). During that period, the contributions received each year could not, in principle, exceed 12.5% of the target level.

In that context, by decisions of 11 April 2022 [3] and 2 May 2023 [4] the SRB determined the *ex-ante* contributions due in respect of 2022 and 2023. Those decisions concern, inter alia, the credit institutions Dexia, Hypo Vorarlberg Bank and Volkskreditbank, and BAWAG, respectively.

Hearing the actions brought by those institutions, the General Court of the European Union annulled [5] the SRB's decisions in so far as they concerned those institutions.

The SRB and the Council of the European Union then asked the Court of Justice to set aside the judgments of the General Court.

In his Opinions, **the Advocate General proposes that the appeals should be dismissed.**

In the first place, the Advocate General examines the arguments relating to the statement of reasons for the conferral of implementing powers on the Council, which led to the adoption of Implementing Regulation 2015/81. In particular, he recalls that the Treaties confer, in principle, **implementing powers on the European Commission and that their conferral on the Council constitutes an exception which must be duly justified**. [6] That requirement for a detailed statement of reasons contributes to the institutional balance as regards the conferral of powers, and the Court must satisfy itself that the substance and purpose thereof are not negated. Regulation No 806/2014 does not contain any justification for the conferral of implementing powers on the Council concerning the determination of the methodology for the calculation of individual contributions during the initial period. The various arguments based, inter alia, on financial stability, the budgetary sovereignty of the Member States, the specific features of the Banking Union, and the composition and role of the Council in the field concerned, do not, according to the Advocate General, make it possible to offset the complete lack of a statement of reasons in the measure reserving implementing powers to the Council, namely Regulation No 806/2014.

In the second place, the Advocate General considers that, in any event, **in Implementing Regulation 2015/81, the Council exceeded the implementing powers conferred on it.** Regulation No 806/2014 lays down a method for calculating individual contributions based expressly on a comparison between the net liabilities of each institution concerned and the aggregate net liabilities of all of the institutions authorised in the territories of all of the participating Member States. By contrast, the implementing regulation establishes a method of calculation whereby, during the initial period, an increasing proportion of the contributions is calculated in that way, whilst a decreasing proportion is calculated taking into account the data of all of the institutions authorised in the territory of each of the participating Member States, taken individually. According to the Advocate General, that method, which is not apparent from the wording of Regulation No 806/2014, does not merely specify the detailed rules for the application of that regulation, but alters the normative content of that regulation.

In the third place, the Advocate General considers that the wording, the origin and the context of Regulation No 806/2014, as well as the objectives pursued by that regulation, reveal a need to reconcile two requirements laid down by two rules in that regulation that have the same legal force. [7] On the one hand, the SRF must reach its target level by the end of the initial period. On the other hand, **the annual contributions may not exceed the cap of 12.5% of the target level forecast each year, which constitutes a mandatory limit.** The Advocate General acknowledges that the circumstances arising from 2020 onwards, in particular the Covid-19 pandemic and the economic consequences of the war in Ukraine, led to a sharp and unforeseeable increase in covered deposits, with the result that the SRB actually found it impossible to reach the target level. Although exceptional, those circumstances did not, however, allow the SRB to exceed the cap set by Regulation No 806/2014.

Last, the Advocate General proposes that **the effects of the SRB's decisions should be maintained until the entry into force of new decisions that are consistent with EU law.** The maintaining of those effects cannot, however, exceed 30 months from the date of delivery of the future judgments of the Court.

The full text of the Opinions (C-454/24 P, C-529/24 P, C-536/24 P, C-537/24 P, C-585/24 P and C-705/24 P) is published on the CURIA website on the day of delivery.

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[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.

[2] Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of [the SRM Regulation] with regard to *ex ante* contributions to the Single Resolution Fund.

[3] 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).

[4] Decision SRB/ES/2023/23 of the Single Resolution Board (SRB) of 2 May 2023 on the calculation of the 2023 *ex ante* contributions to the Single Resolution Fund (SRF).

[5] Order of the General Court of 6 August 2024, *BAWAG PSK* v *SRB*, T-410/23, judgment of the General Court of 10 April 2024, *Dexia* v *SRB (2022* ex ante *contributions)* T-411/22, (see also Press Release No 62/24), judgment of the General Court of 29 May 2024, *Hypo Vorarlberg Bank* v *SRB (2022* ex ante *contributions)*, T-395/22, (see also Press Release No 88/24) and judgment of the General Court of 3 July 2024, *Volkskreditbank* v *SRB (2022* ex ante *contributions)*, T-406/22.

[6] In accordance with Article 291(2) TFEU.

[7] Articles 69 and 70 of Regulation No 806/2014.