C/2023/54

9.10.2023

Action brought on 31 July 2023 — Crédit Agricole and Others v SRB

(Case T-456/23)

(C/2023/54)

Language of the case: French

Parties

Applicants: Crédit Agricole SA (Montrouge, France) and the 55 other applicants (represented by: A. Gosset-Grainville and M. Trabucchi, lawyers)

Defendant: Single Resolution Board (SRB)

Form of order sought

The applicants claim that the Court should:

— pursuant to Article 263 TFEU, annul Decision SRB/ES/2023/23 of 2 May 2023 on the calculation of the 2023 ex-ante contributions to the SRF in so far as it concerns the applicants;

— pursuant to Article 277 TFEU, declare the following provisions of the SRM Regulation, [1] the Implementing Regulation [2] and the Delegated Regulation [3] inapplicable;

— Articles 69(1), 69(2), 70(1) and 70(2)(a) and (b) of the SRM Regulation;

— Articles 4(2), 5, 6, 7 and 20 of the Delegated Regulation, and Annex I thereto;

— Article 4 of the Implementing Regulation;

— order the defendant to pay the costs in their entirety.

Pleas in law and main arguments

In support of the action, the applicants put forward eight pleas in law.

1. First plea in law, alleging infringement of the principle of equal treatment in that the methods of calculation of ex-ante contributions to the Single Resolution Fund (SRF) laid down in the SRM Regulation and the Delegated Regulation do not reflect the actual size or actual risk of the institutions, which results in their being treated in the same manner as other institutions with different characteristics.

2. Second plea in law, alleging infringement of the principle of proportionality in that the mechanism of ex-ante contributions to the SRF laid down in the SRM Regulation and the Delegated Regulation is based on an assessment which artificially exacerbates the risk profile of large French institutions and therefore leads to a disproportionately high contribution amount compared to the actual risk generated by those institutions.

3. Third plea in law, alleging infringement of the principle of legal certainty, since the calculation of the amount of the ex-ante contributions fixed by the SRM Regulation, the Delegated Regulation and the Implementing Regulation do not enable banking institutions to anticipate and control with sufficient precision the amount of the contribution that they will have to pay.

4. Fourth plea in law, alleging infringement of the principle of good administration, including the obligation to state reasons, in that not all of the risk indicators were duly taken into account in the contested decision. In addition, that option given to the SRB as to whether or not to take account of those criteria, in accordance with Article 20 of the Delegated Regulation, is not lawful.

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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 (OJ 2014 L 255, p. 1).

(2) Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to ex ante contributions to the Single Resolution Fund (OJ 2015 L 15, p. 1).

(3) 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).

5. Fifth plea in law, alleging an error of law as regards the fixing of the adjustment coefficient. The applicants allege an error of law in that the SRB, which relied on an erroneous interpretation of several provisions of the SRB Regulation, fixed the annual target level above the ceiling of 12.5 % of the final target level required by Article 70 of the SRM Regulation. The applicants take the view, in any event, that those provisions are inherently flawed.

6. Sixth plea in law, alleging an error of law as regards the restriction on the use of irrevocable payment commitments ('IPCs'). The applicants allege an error of law since the SRB relied on a misinterpretation of the provisions regulating the use of IPCs in order, first, to restrict the proportion of IPCs below the ceiling of 30 % of ex-ante contributions without having the competence to do so and, second, to limit the type of collateral to cash only, thereby undermining the effectiveness of those provisions.

7. Seventh plea in law, alleging a manifest error of assessment. The applicants claim in that regard that the pro-cyclicality and liquidity risks relied on by the SRB in order to limit the use of IPCs are unfounded, particularly in the light of the specific characteristics of the IPCs and the context of their use.

8. Eighth plea in law, alleging infringement of the obligation to state reasons. The applicants submit that the contested decision does not state in a precise and detailed manner why it was necessary, first, to fix the ceiling on the use of IPCs at 22.5 % and, second, to accept as collateral cash only.