

1 September 2017

case 33/17

DECISION

[Appellant]

appellant

v

the Single Resolution Board

Yves Herinckx, Vice-Chair
Eleni Dendrinou-Louri
Kaarlo Jännäri
Marco Lamandini
Luis Silva Morais

DECISION

In Case 33/17,

APPEAL under Article 85(3) 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 and amending Regulation (EU) No 1093/2010 (the “SRMR”),

[Appellant], [address], Spain, appellant,

v

the Single Resolution Board, represented by Dr Elke König, Chair,

THE APPEAL PANEL,

composed of Yves Herinckx, Vice-Chair, Eleni Dendrinou-Louri, Kaarlo Jännäri, Marco Lamandini and Luis Silva Morais,

makes the following decision.

(1) The procedure

1. An application was received by the Secretariat of the Appeal Panel on 24 July 2017, addressed to the Single Resolution Board and stating that it constituted a revision appeal. On 26 July 2017 the Secretariat wrote to Mr [Appellant] and asked to clarify whether the application should be considered as an appeal to the Appeal Panel. Mr [Appellant] responded in the affirmative on 26 July 2017.
2. Mr [Appellant] was a shareholder of Banco Popular Español, S.A. (“Banco Popular”) and seeks, among other remedies, the annulment of the Board’s decision dated 7 June 2017 whereby the Board placed Banco Popular under resolution and adopted a resolution scheme. The scheme includes a full write-down of the shares in Banco Popular, a conversion into shares of all additional tier 1 instruments issued by Banco Popular followed by a full write-down of the shares resulting from this conversion, and a conversion into shares of all tier 2 instruments issued by Banco Popular followed by a sale to Banco Santander S.A. for a total consideration of € of the shares resulting from this conversion.
3. The remedies sought by Mr [Appellant], as set out in the operative part of the notice of appeal, comprise the following claims:

- (a) the annulment of the contested decision;
 - (b) in the alternative, a fair indemnification for the deprivation of his assets; and
 - (c) access to the decision file, including the independent expert's provisional valuation report.
4. On 26 July 2017, the Vice-Chair of the Appeal Panel informed Mr [Appellant] that, on a preliminary analysis, the contested decision appeared to fall outside the Appeal Panel's jurisdiction and the remedies sought under the above items (b) and (c) appeared to be beyond the powers of the Appeal Panel. The Vice-Chair requested Mr [Appellant] to submit by 31 July 2017 his observations on these issues and to advise by the same date if he wished to make oral representations. Mr [Appellant] did not respond.

(2) Findings of the Appeal Panel

5. The jurisdiction of the Appeal Panel is determined by Article 85(3) of the SRMR: appeals to the Appeal Panel are permitted against decisions of the Board referred to in Article 10(10), Article 11, Article 12(1), Articles 38 to 41, Article 65(3), Article 71 and Article 90(3) of the SRMR. Other types of decisions of the Board are not appealable to the Appeal Panel; they may be appealable to the Court of Justice of the European Union in accordance with Article 86(1) of the SRMR and Article 263 TFEU, subject to the admissibility conditions set out in these provisions.
6. The contested decision relates to the resolution of a credit institution. It is based on Articles 14 to 29 (Part II, Title I, Chapter 3, 'Resolution') of the SRMR. This is a decision of a type which is not listed in Article 85(3) of the SRMR.
7. The powers of the Appeal Panel are defined by Article 85(8) of the SRMR. The Appeal Panel "may confirm the decision taken by the Board, or remit the case to the latter". The Appeal Panel has no other powers. In particular, it may not grant damages nor order the Board to grant access to documents for other purposes than the conduct of proceedings properly pending before the Appeal Panel.
8. The appeal is therefore not admissible.

On those grounds, the Appeal Panel hereby:

- 1. Declares that the appeal is not admissible.**

Yves Herinckx
Vice-Chair

Eleni Dendrinou-Louri

Kaarlo Jännäri

Marco Lamandini

Luis Silva Morais

This decision is signed in Spanish and in English. The Spanish version is authentic; the English version is a translation.