



**15 April 2020**

Case 1/2020

# **FINAL DECISION**

[.],

**Appellant,**

**v**

**the Single Resolution Board**

Christopher Pleister, Chair  
Luis Silva Morais, Vice-Chair  
David Ramos Muñoz, Rapporteur  
Helen Louri-Dendrinou  
Kaarlo Jännäri

**TABLE OF CONTENTS**

**Background of facts** ..... 3

**Appellant** ..... 4

**Board** ..... 5

**Findings of the Appeal Panel** ..... 5

**Tenor** ..... 6

## FINAL DECISION

In Case 1/20

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<sup>1</sup> (the “SRMR”),

[.], with address for service in [.], (hereinafter the “Appellant”)

v

**the Single Resolution Board** (hereinafter the “Board” or “SRB”),

(together referred to as the “Parties”),

### THE APPEAL PANEL,

composed of Christopher Pleister (Chair), David Ramos Muñoz (Rapporteur), Luis Silva Morais (Vice-Chair), Helen Louri-Dendrinou and Kaarlo Jännäri,

makes the following final decision:

### **Background of facts**

1. This appeal relates to the SRB decision of 12 February 2020 (hereinafter the “Confirmatory Decision”) rejecting the Appellant’s confirmatory application, by which the Appellant requested the SRB to reconsider its position in relation to its initial request and the SRB’s response thereto, concerning the access to documents in accordance with Article 90(1) of SRMR and Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereinafter ”Regulation 1049/2001”), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents<sup>3</sup> (hereinafter ”Public Access Decision”).
2. By his initial email of 7 November 2019, the Appellant requested access to the following documents: (a) itemized phone bill between May and August 2017, with the calls concerning the resolution of Banco Popular, by the SRB members involved in the resolution of the said bank; (b) information on whether, in the internal investigation announced by Mrs. König, it was determined the use of any personal phone during the process.
3. In its Initial Response of 16 January 2020 the SRB communicated the Appellant that it could not grant his request, as it fell outside the scope of rules on access to documents, and, in

---

<sup>1</sup> OJ L 225, 30.7.2014, p.1.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43

<sup>3</sup> SRB/ES/2017/01.

addition, the SRB was not in possession of documents fitting the description given by the Appellant, and, should these be considered “documents”, they could not be disclosed.

4. On the same date, 16 January 2020 the Appellant sent an email with a Confirmatory Application, which was registered by the SRB on 22 January 2020, with reference number Ares (2020)388953, and processed in accordance with articles 90(1) of Regulation 806/2014, article 8 Regulation 1049/2001, and article 8 of the Public Access Decision. The response, on 12 February 2020, was in the form of a Confirmatory Decision.
5. On 12 February 2020 the Appellant sent an email to the Appeal Panel contesting the Confirmatory Decision denying his request of access to documents, attaching the Confirmatory Decision and adding questions about the SRB’s intervention and role in the judicial appeals pending before the General Court and presented against the decisions of the Appeal Panel, which were not part of the initial request.
6. On 19 February 2020 the Appeal Panel, having determined that this is a case where admissibility must be examined before any consideration of the merits, according to Article 5(4)(a) and 9(2) of the Rules of Procedure, asked the parties to submit within two weeks their written submissions on the admissibility of the appeal.
7. The Appellant made his submissions on admissibility on 20 February 2020.
8. The SRB requested an extension of the deadline to make its submissions, which was granted, pursuant to article 6 (4) of the Rules of Procedure. Later, it requested an additional extension, due to the exceptional and unprecedented situation resulting from the Covid-19 pandemic and ensuing measures. The Appeal Panel granted this second extension as well pursuant to article 8(1) of the Rules of Procedure. On 31 March 2020 the SRB filed its response.
9. Both parties have made their written submissions.
10. On 8 April 2020 the Appeal Panel, having considered the submissions of both Parties notified the Parties that the Chair considered that the appeal had been lodged for the purposes of Article 85(4) of Regulation 806/2014 and 20 of the Rules of Procedure as to the determination on the admissibility of the appeal.

### **Main arguments of the parties**

11. The main arguments of the parties are briefly summarised below. It is specified that the Appeal Panel considered every argument raised by the Parties, irrespective of the fact that a specific mention to each of them is not expressly reflected in this decision.

### **Appellant**

12. The Appellant challenges the Confirmatory Decision claiming that he has the right to access the requested documents. He claims that he is not asking the SRB to create any document, but to request an existing document from the SRB supplier which is in possession of it; he further

adds that the personal data can be redacted, and that the telephones used by SRB staff are not personal, which means that their calls must be work-related, and thus susceptible of being subject to accountability by citizens.

### **Board**

13. The Board argues that the appeal is inadmissible because the Appellant fails to state any valid reasons why the justifications provided by the SRB for its refusal to provide access to documents are not valid, and fails to provide any evidence on any change of (legal and factual) circumstances that would warrant a reassessment of the accessibility of the requested documents.
14. The Board further argues that institutions are not compelled to create a document that does not exist in order to address a specific request for public access; and that the possibility of granting access to the information requested would not be possible without undermining the protection of privacy. Finally, it argues that the Appellant's request for information on the SRB intervention on the legal proceedings before the General Court of the European Union against Appeal Panel decisions is not a request which was made with the confirmatory request and does not fall within the scope of the Appeal Panel's review.

### **Findings of the Appeal Panel**

15. The Appeal Panel notes that the Appellant has already filed, in the past, numerous appeals [..]. He is, thus, necessarily familiar, at this stage, with the Rules of Procedure governing the appeals before the Appeal Panel.
16. According to Article 5 of the said Rules of Procedure, a party wishing to bring an appeal against a decision of the Board under Article 85(3) Regulation 806/2014 shall do so by way of a "notice of appeal". To fulfil the requirements of such notice of appeal, the appellant needs to (1) identify the decision subject to the appeal, (2) use the language of the decision, (3) annex (or attach) the appealed decision; *and* importantly (4) include (a) a statement of why the appeal is admissible under article 85 (3) Regulation 806/2014; (b) a statement of grounds on which it is based; (c) a statement of the grounds to justify a suspension of the decision's effect, if a request for such suspension is made; and (d) the documents on which the appellant intends to rely (article 5 of the Rules of Procedure, sections (1)-(4)). If the appellant does not wish to suspend the effects of the appealed decision, nor does he intend to rely on specific documents, it suffices with a statement of why the appeal is admissible, and of the grounds on which it is based.
17. These requirements are not exacting and are sufficiently straightforward. They are also necessary. It is the appellant's initiative that sets the procedure in motion, and it is the appellant's responsibility to provide the grounds for the Appeal Panel to decide. The terms used by the Rules of Procedure, such as "a statement of why the appeal is admissible" or a "a statement of grounds", are clear, but also sufficiently open to make room for a case-by-case assessment of the circumstances, including the fact of whether the appellant is represented or

not by counsel, ensuring the widest possible access to Appeal Panel review. And yet, there has to be a minimum content. That minimum content is what enables the Appeal Panel to understand what is being appealed, and on what grounds.

18. In this case, the Appellant does not explain why the Confirmatory Decision might be wrong, or why the requests presented would be requests for documents and not information. Nor does the Appellant explain why the inquiry made, concerning the SRB action before the Court of Justice in proceedings against Appeal Panel decisions would be admissible, despite it is a question, and not a request for documents, and was not part of the initial application, but was subsequently added.
19. The above-indicated omissions would, in and of themselves, disqualify the present appeal. Furthermore, it should also be underlined that, it is settled case-law that once a European institution, body or agency asserts that a document does not exist, it is not obliged to create a document which does not exist (CJEU, judgment of 11 January 2017, *Rainer Typke v. Commission*, C-491/15 P, EU:C:2017:5 at para 31) and that institution, body and agency can rely on a rebuttable presumption that, indeed, the document does not exist (GCEU, judgment 23 April 2018, *Verein Deutsche Sprache v. Commission*, T-468/16, EU:T:2018:207). Following the Court of Justice, the Appeal Panel has repeatedly acknowledged this principle, including in its decision of 27 January 2020 (case 7/19) and of 9 October 2019 (case 6/19) which resulted from an appeal filed by the Appellant himself. This means that the Appellant is well aware of the applicable legal principle. Yet, he offers no explanation as to why an exception may exist in this case, nor arguments as to why the Appeal Panel should interpret the above cited case law differently, nor a justification that helps identify what the dispute is about.
20. The appeal is therefore inadmissible.

On those grounds, the Appeal Panel hereby

**Dismisses the appeal as inadmissible.**

---

Helen Louri-Dendrinou

---

Kaarlo Jännäri

---

Luis Silva Morais  
Vice-Chair

---

David Ramos Muñoz  
Rapporteur

---

Christopher Pleister  
Chair

For the Secretariat of the Appeal Panel: