



**13 August 2018**

Case 04/18

# **FINAL DECISION**

[     ]

**Appellant,**

**v**

**the Single Resolution Board**

Christopher Pleister, Chair  
Kaarlo Jännäri, Rapporteur  
Luis Silva Morais, Vice-Chair  
Helen Louri-Dendrinou  
Marco Lamandini

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**FINAL DECISION**

Case 4/2018,

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”),

**[Appellant]**, (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), Kaarlo Jännäri, (Rapporteur), Luis Silva Morais (Vice-Chair), Helen Louri-Dendrinou, Marco Lamandini,

makes the following final decision:

**Background of facts**

1. This appeal relates to the SRB’s contribution notice dated 9 March 2018 (hereinafter the “Contribution Notice”), by which the Board requested the Appellant to pay EUR 54.638,26 as contribution to the SRB administrative expenses (hereinafter the “Administrative Contributions”) due by the Appellant for the financial year of 2018.
2. The SRB started to calculate Administrative Contributions as of 4 November 2014 (however, November and December 2014 were considered in the request for payment as part of the financial year 2015). During the provisional period from 2015 to 2017, the payment of Administrative Contributions was regulated by Commission Delegated Regulation (EU) No 1310/2014 of 8 October 2014 on the provisional system of instalments on contributions to cover the administrative expenditures of the Single Resolution Board<sup>2</sup> (hereinafter the “Delegated Regulation 1310/2014”). Pursuant to Article 4(2) of Delegated Regulation 1310/2014, only entities qualifying as “significant entities” under the Delegated Regulation 1310/2014 were requested to advance instalments of Administrative Contributions during the provisional period. Pursuant to Article 3(d) of Delegated Regulation 1310/2014, “*significant entities*’ means the entities that have been notified by the [European Central Bank (“ECB”)] at the highest level of consolidation within the participating Member States, of the ECB’s decision to consider them significant within the meaning of Article 6(4) of Regulation (EU)

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

<sup>2</sup> OJ L 354, 11.12.2014, p. 1.

*No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities which are subsidiaries of groups already taken into account [ ]*". The Appellant was included on this list at the time of the appeal.

3. Delegated Regulation 1310/2014 was repealed by the Commission Delegated Regulation 2361/2017 of 14 September 2017, which put forward the final system of contributions to the administrative expenditures of the Single Resolution Board<sup>3</sup> (hereinafter the "Delegated Regulation 2017/2361"), which came into force on 8 January 2018. According to the Delegated Regulation 2017/2361, in 2018 the SRB was required to calculate the Administrative Contributions for 2018 as well as the final Administrative Contributions for the years 2015 to 2017 in accordance with the final methodology provided by the Delegated Regulation 2017/2361. With respect to entities that paid instalments during the provisional period, pursuant to Article 10(4) of Delegated Regulation 2361/2017, the SRB was requested to calculate the difference between the instalments paid under the provisional system regulated by Delegated Regulation 1310/2014 and the actual contributions due under the final system regulated by Delegated Regulation 2361/2017, and such difference was to be settled in the calculation of the annual contributions due for the financial year which followed the end of the provisional period, and namely 2018.
4. To the effect of the above calculations the Board used the data collected by the ECB under Regulation No. 1163/2014 of 22 October 2014 on supervisory fees<sup>4</sup> (hereinafter the "ECB Regulation 1163/2014"), notified by the ECB to the SRB in January 2018.
5. Based upon the foregoing, with the Contribution Notice, the Appellant was requested to pay Administrative Contributions for the financial year 2018 of EUR [ ] as well as administrative contributions of EUR [ ] for 2015, EUR [ ] for 2016 and EUR [ ] for 2017.
6. The Appellant's notice of appeal was submitted to the Appeal Panel on 18 April 2018 within the time limit of six weeks from the Contribution Notice in accordance with Article 85(3) SRMR.
7. The Chair of the Appeal Panel appointed as rapporteur the member Kaarlo Jännäri. On 28 May 2018, the SRB submitted its response to the appeal, whereas the Appellant replied on 12 June 2018 in a rebuttal to which the SRB in turn responded on 2 July 2018. On 19 July 2018 the Appellant (now as [Appellant] is in liquidation) informed that on [ ] 2018 the ECB had decided to withdraw the license of the Appellant as of midnight that day.
8. On 17 July 2018 the Appeal Panel asked the Parties to confirm by 20 July 2018 whether, to the effect of Article 85(7) SRMR and Article 18 of the Appeal Panel's Rules of Procedure

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<sup>3</sup> OJ L 337, 19.12.2017, p. 6.

<sup>4</sup> ECB/2014/41; OJ L 311, 31.10.2014, p. 23.

(“RoP”), they agreed that there was no need for an oral hearing. Both Parties saw no need for an oral hearing.

9. On 27 July 2018, having considered that both parties declined to make oral representations and after having verified the Parties’ submissions, the Appeal Panel informed the Parties that it considered the appeal lodged for the purposes of Article 85(4) SRMR and 20 RoP with effect as of the same day.

### **Main arguments of the Parties**

10. The main arguments of the Parties are briefly summarized below, to the extent that they are necessary for the determination of the merits. However, in order to avoid unnecessary duplications, more specific arguments raised by the parties shall be considered, to the extent necessary for the just determination of this appeal, where this decision addresses each of these arguments in the section of this decision devoted to the findings of the Appeal Panel. It is also 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 merely for reasons of procedural economy.

### Appellant

11. The Appellant argues that on 23 February 2018 following a declaration of the ECB that the Appellant was failing or likely to fail, the SRB took a decision not to place the Appellant under resolution; thus the Appellant is being liquidated under national law. The Appellant argues that following this decision, the SRB ceased to provide any service to the Appellant and that the Appellant is no longer subject to the Single Resolution Mechanism and should therefore not pay Administrative Contributions to the SRB. The Appellant requests the SRB to recalculate the individual contribution of the Appellant taking into account for 2018 only the month of January and not the entire year.
12. Further, the Appellant argues in its submission of 12 June 2018 that, even if the Appellant still held its banking licence, starting as of 23 February 2018 the Appellant was unable to perform its functions as credit institution and ceased to satisfy the criteria which would qualify the Appellant as a credit institution. The Appellant adds that it is of the opinion that the SRB was promptly notified of these changes by the ECB.

### Board

13. The Board argues that the decisive factor for determining whether an entity is subject to the obligation to pay Administrative Contributions to the SRB rests on the very fact that such entity falls within the scope of Article 2 SRMR, as it is the case for the Appellant. The decision taken by the SRB on 23 February 2018, in the Board’s view, does not affect the status of the Appellant as a credit institution and therefore does not change the obligation of the Appellant to pay Administrative Contributions.

### Findings of the Appeal Panel

14. Pursuant to Article 59(1) SRMR, Administrative Contributions shall cover the annual estimated administrative expenditure of the SRB. Pursuant to Article 65 SRMR, entities falling within the scope of the SRMR shall pay such Administrative Contributions. To this effect, the Board shall determine and raise the contributions in a decision addressed to the entity concerned (Article 65(3) SRMR).
  
15. Pursuant to its Article 2(a), the SRMR applies to all “*credit institutions established in a participating Member State*” within the meaning of Article 2(3) of Council Regulation (EU) 1024/2013<sup>5</sup> (hereinafter the “SSM-Regulation”). The Appellant was at the moment when the SRB took the decision on the determination of Administrative Contributions and notified it to the Appellant established as a credit institution in [ ]. Therefore, despite the decision by the SRB on 23 February 2018, whereby the Board determined that a resolution action was not necessary in the public interest pursuant to Article 18(5) SRMR, the Appellant still was a licensed credit institution as defined in Article 4(1) of Regulation (EU) No 575/2013<sup>6</sup> until [ ] 2018 and until that date was therefore liable to pay Administrative Contributions. The determination of the individual Administrative Contributions follows indeed specific pre-defined criteria as set out under Delegated Regulation 2017/2361. These are non-discretionary criteria (which comprise for instance the size of the entity and its risk model) and there is no evidence submitted by the Appellant that the Board made any manifest error in applying these criteria as such in the present case. Any additional factors which are not mentioned in a list as exhaustive of non-discretionary criteria for determining the obligation to pay Administrative Contributions (as it happens undoubtedly with the fact that the credit institution is likely to fail and must be liquidated under the applicable national insolvency laws) can therefore not be considered.
  
16. Only starting from [ ] 2018 the Appellant ceased to be a credit institution and it no longer qualified as an entity referred to in Article 2 of Regulation EU 806/2014. According to Article 7(1) Delegated Regulation 2361/2017, this implies that Administrative Contributions for the year 2018 must be re-calculated and paid by the Appellant on a *pro rata temporis* basis, by reference to the number of full months during which the Appellant fell under the scope of Article 2 SRMR, and namely until [ ] 2018 (i.e. [ ] full months). However, since this event occurred after the adoption of appealed decision (the Contributions Notice) and after the filing of the appeal, such change of status of the Appellant cannot support a finding that the appeal is founded. At the time of adoption of the Contribution Notice, the Board was correct in calculating the Administrative Contributions due by Appellant for 2018 beyond the date of 23 February 2018. The new circumstance occurred on [ ] 2018 will have to be taken into account by the Board according to Article 7(4) of Delegated Regulation 2361/2017 and the Board shall recalculate the 2018 Administrative Contributions due by the Appellant at the latest in the

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<sup>5</sup> Of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; OJ L 287, 29.10.2013, p. 63.

<sup>6</sup> Of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; OJ L 176, 27.6.2013, p. 1.

course of the recalculation of the 2018 Administrative Contributions cycle. Practical arrangements could also be agreed earlier by the parties, at the time of payment by the Appellant of the 2018 Administrative Contributions following this decision, to prevent a payment from the Appellant for the entire year 2018 which should partially be reimbursed by the Board later on.

On those grounds, the Appeal Panel hereby:

**dismisses the appeal**

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Helen Louri-Dendrinou

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Kaarlo Jännäri  
Rapporteur

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Luis Silva Morais  
Vice-Chair

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Marco Lamandini

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Christopher Pleister  
Chair