



13 August 2018

Case 06/18

FINAL DECISION

[]

Appellant,

v

the Single Resolution Board

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

TABLE OF CONTENTS

Background of facts3

Main arguments of the Parties.....5

Appellant.....5

Board5

Findings of the Appeal Panel6

Tenor7

FINAL DECISION

Case 6/18,

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 1093/2010¹ (the “SRMR”),

[Appellant], a legal entity (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 to the Appellant the payment of EUR 10,116.50 as contribution to the SRB administrative expenses (hereinafter the “Administrative Contributions”) due by the Appellant for the financial years of 2015 to 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 Board² (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)

¹ OJ L 225, 30.7.2014, p.1.

² 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 [...]".

3. The Appellant has been the subject of comprehensive restructuring and the closure of its voluntary winding up is planned for 2020. In this process, the Appellant received funding from the private protection scheme by the [] Banking Association and its affiliates, [].
4. 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 Board³ (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.
5. 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 fees⁴ (hereinafter the "ECB Regulation 1163/2014"), notified by the ECB to the SRB in January 2018.
6. 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.
7. 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.
8. 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. There were no further submissions by the Parties.
9. On 27 June 2018 the Appeal Panel asked the Parties to confirm whether, to the effect of Article 85(7) SRMR and Article 18 of the Appeal Panel's Rules of Procedure (hereinafter the

³ OJ L 337, 19.12.2017, p. 6.

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

“RoP”), they agree that there was no need for an oral hearing. While the SRB explicitly agreed that there was no need for a hearing, the Appellant did not respond to date.

10. On 20 July 2018, following internal discussion and verifications of the submissions, having considered that both parties showed no interest in making oral representations and in particular that the Appellant’s silence in respect to the specific request of the Appeal Panel concerning the hearing would amount to an implicit waiver of such hearing as recognized by the RoP, 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

11. 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

12. The Appellant argues that it is an institution which has been undergoing comprehensive restructuring since the very beginning of the financial crisis, it received support from the private protection scheme by the [] Banking Association and its affiliates as from 2015 and is now under resolution and that this specific circumstances were not taken into consideration by the SRB when calculating the Administrative Contributions. Based upon the foregoing, the Appellant argues that making the Appellant liable for the payment of the Administrative Contributions would in practice mean imposing such burden, although indirectly, on the German banks which are members of the private protection scheme by the [] Banking Association and its affiliates providing financial support to the Appellant, the same [] banks, however, already contribute to the administrative expenses of SRB pursuant to Article 65 SRMR.
13. Therefore, the Appellant “asks the Appeal Panel for (i) complete exemption from the obligation to pay annual contributions, (ii) exemption from the contributions raised for the 2015, 2016, 2017 and 2018 financial years, (iii) reimbursement of the amounts paid, in the sum of EUR []”.

Board

14. 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 Board

argues, that therefore the Appellant is obliged to pay Administrative Contributions for the period from 2015-2018 amounting in total to []. The Appellant's request for reimbursement is therefore irrelevant in the view of the Board.

15. Moreover the Board notes that the fact, that the Appellant has received funding from the private protection scheme by the German Banking Association and its affiliates is irrelevant as it does not amount to an exemption from payment of Administrative Contributions under the applicable legal framework.

Findings of the Appeal Panel

16. Pursuant to Article 59(1) SRMR, Administrative Contributions shall cover the annual estimated administrative expenditure of the SRB. Pursuant to Article 65 SRMR, all 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).
17. 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) 1024/2013⁵ (hereinafter the "SSM-Regulation"). The Appellant, despite its ongoing restructuring and winding down processes, still is a licensed credit institution as defined in Article 4(1) of Regulation (EU) No 575/2013⁶ and is therefore liable to pay Administrative Contributions.

No exemptions from the obligation to pay Administrative Contributions are provided for in the SRMR nor in the Delegated Regulation 2017/2361 for events like those claimed by the Appellant as justifications for its reimbursement request. In particular, the determination of the individual Administrative Contributions follows 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 is undoubtedly the case of the factor corresponding to the financial support received by the Appellant from the private protection scheme by the German Banking Association and its affiliates - can therefore not be considered.

18. The Board was therefore correct, when calculating the Administrative Contributions due by the Appellant and to be paid under the provisional as well as under the final system of collecting administrative contributions throughout the years 2015-2018.

⁵ 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.

⁶ 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.

On those grounds, the Appeal Panel hereby:

dismisses the appeal

Helen Louri-Dendrinou

Kaarlo Jännäri
Rapporteur

Luis Silva Morais
Vice-Chair

Marco Lamandini

Christopher Pleister
Chair