

1 August 2017

case 11/17

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 11/17,

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. The notice of appeal was received by the Secretariat of the Appeal Panel on 10 July 2017.
2. Mr [Appellant] alleges to be a bondholder and a shareholder of Banco Popular Español, S.A. (“Banco Popular”) and seeks, among other alternative remedies, the annulment and the suspension 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 €1 of the shares resulting from this conversion.
3. The operative part of the notice of appeal reads as follows:

REQUEST: to admit this present document and to treat it as a timely and properly presented revision appeal against the decision made by the Single Resolution Board at its extended executive session of 7 June 2017 which

approved the resolution of Banco Popular Español, S.A., as the implementation of such decision has caused very serious damage to the property of the former and legitimate shareholders and debtholders of Banco Popular; and to adopt this day a decision annulling and rendering ineffective the decision of resolution of the bank and its implementing measures.

FIRST SUBSIDIARY REQUEST: to declare, in any case, the immediate suspension of the implementation measures carried out by the FROB since its validity and entry into force causes irreparable or hardly reparable harm to the property of the creditors and shareholders of Banco Popular.

SECOND SUBSIDIARY REQUEST: in case the preceding requests are not admitted, to restore to me, under the same terms as at their issue together with accrued interest, all tier 2 subordinated bonds which were converted into newly issued shares and were sold to Banco de Santander; similarly, to give me restitution of the ordinary shares in Banco Popular that were written down.

Alternatively, to repay the debt instruments at their nominal amount with accrued interest and to indemnify me economically for the fair price of the shares in Banco Popular which I held before their write-down.

4. On 19 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. The Vice-Chair requested Mr [Appellant] to submit by 24 July 2017 his observations on the admissibility of the appeal 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. 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.