



28 February 2019

Case 22/2018

FINAL DECISION

[Appellant],

v

the Single Resolution Board

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

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FINAL DECISION

In Case 22/18

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**], with address for service [.] (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), Marco Lamandini (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 20 December 2018 (hereinafter the “Confirmatory Decision”) rejecting the Appellant’s confirmatory application, by which the SRB was requested by the Appellant 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 documents² (hereinafter “Regulation 1049/2001”), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents³ (hereinafter “Public Access Decision”).
2. By the initial request and the confirmatory application, the Appellant requested access to the Definitive Valuation 2 Report and the ECB failing or likely to fail (“FOLTF”) assessment.
3. The notice of appeal was notified to the Board on 17 January 2019.
4. The Board submitted its response on 31 January 2019 objecting that the appeal was inadmissible because it did not properly state its grounds and the Appellant, in the appeal, did not refer to the same documents requested in the Confirmatory Decision but to other

¹ OJ L 225, 30.7.2014, p.1.

² OJ L 145, 31.5.2001, p. 43

³ SRB/ES/2017/01.

documents not contemplated in the Confirmatory Decision. In the Board's view this is in violation of Article 85 SRMR according to which the appeal must be filed "together with a statement of grounds"

5. On 5 February 2019, the Appeal Panel adopted and notified the Parties of the following procedural direction:

"We refer to pending case 22/18, where the Appellant has challenged, to the best of our understanding, the Confirmatory Decision adopted by the Board on 20 December 2018. With such Board decision the Appellant was refused access to the Definitive Valuation 2 Report and to the FOLFT assessment. The Appeal Panel notes that the statement of grounds (as required under Article 5(4)(b) RoP) for the appeal in pending case 22/18 is hardly addressing specifically the reasons why the Appellant considers that the Confirmatory Decision referred to the abovementioned documents should be remitted to the Board by the Appeal Panel. The language of the appeal is quite vague and could refer to any decision of the Board refusing access to documents. Moreover, in its section 4 the appeal seems even to refer to different documents than those contemplated by the Confirmatory Decision (namely the requests for information, the documents received from Banco Popular in relation to the private sale process, the cover letter sent to the SRB by FROB in relation to the offer and the certificate of FROB's Governing Committee, and the offer submitted by Banco Santander on 7 June 2017). The Appeal Panel deems therefore appropriate to hereby issue a direction to the Appellant, according to, and with the effects of, Article 14 RoP whereby the Appellant is required to file with the Secretariat of the Appeal Panel, within one week from the receipt of the present direction, written submissions complementing the appeal and clearly stating the reasons why the Appellant is challenging the Confirmatory Decision adopted by the Board on 20 December 2018. The Board is then granted two weeks from the date of such Appellant's submissions to respond. The Appeal Panel informs the Appellant that, failure to comply with this direction, may justify that the Appeal Panel adopts an order to dismiss the appeal under Article 14(1) RoP and that the Appellant is hereby given notice of this possible outcome, in accordance with Article 14(2), so that the Appellant has also an opportunity to make representations against the making of such an order."

6. On 12 February 2019 the Appellant submitted a brief, called "aclaraciones" together with a "respuesta" ([.]). None of these documents, however, addressed specifically the grounds for which the Appellant challenged the Confirmatory Decision.

Findings of the Appeal Panel

7. The Appeal Panel preliminary notes that, according to Article 85(3) SRMR and Article 5 of the Appeal Panel Rules of Procedure, a notice of appeal shall state the grounds on which it is based.
8. According to Article 9 of the Appeal Panel Rules of Procedure, if the Board contends that the appeal is not admissible under Article 85(3) SRMR the Appeal Panel shall determine whether it is admissible before examining whether it is well founded under Article 85(7) SRMR. The Appeal Panel may, of its own motion, raise any question as to admissibility.
9. As noted above, the Appeal Panel preliminarily found that the Appellant's statement of grounds was hardly addressing specifically the reasons why the Appellant considers that the

Confirmatory Decision should be remitted to the Board by the Appeal Panel and that the language of the appeal was vague and could refer to any decision of the Board refusing access to documents. Moreover, the appeal seemed to refer to different documents than those contemplated by the Confirmatory Decision (namely the requests for information, the documents received from Banco Popular in relation to the private sale process, the cover letter sent to the SRB by FROB in relation to the offer and the certificate of FROB's Governing Committee, and the offer submitted by Banco Santander on 7 June 2017). The Appeal Panel deemed therefore appropriate to adopt and notify on 5 February 2019 a direction to the Appellant, according to Article 14 RoP, whereby the Appellant was required to file with the Secretariat of the Appeal Panel, within one week from the receipt of said direction, written submissions complementing the appeal and clearly stating the reasons why the Appellant is challenging the Confirmatory Decision adopted by the Board on 20 December 2018.

10. The Appeal Panel finds that the Appellant failed to comply with the direction of the Appeal Panel and that the new submissions made by the Appellant on 12 February 2019 are still vague and generic complaints which, on the one hand, do not even mention the disclosure of the Definitive Valuation 2 Report and, as to the FOLTF assessment, appear to be directed to a different institution and do not specifically challenge the reasons stated by the Board with the Confirmatory Decision to deny full access to such document (already available to the public in a redacted version).
11. Article 14(1) of the Appeal Panel Rules of Procedure states that “where a party has, without reasonable excuse, failed to comply with a direction of the Appeal Panel or a provision of these rules, the Appeal Panel may, where that party is the appellant, dismiss the appeal wholly or in part”.
12. The Appeal Panel further notes that, in accordance with Article 14(2) of the Appeal Panel Rules of Procedure, the direction sent by the Appeal Panel to the Appellant on 5 February 2019 clearly and unequivocally stated that “The Appeal Panel informs the Appellant that, failure to comply with this direction, may justify that the Appeal Panel adopts an order to dismiss the appeal under Article 14(1) Rules of Procedure and that the Appellant is hereby given notice of this possible outcome, in accordance with Article 14(2), so that the Appellant has also an opportunity to make representations against the making of such an order”.
13. The Appeal Panel considers therefore that - although the Appellant was granted an opportunity to remedy its original failure to comply with Article 85(3) SRMR and Article 5 of the Appeal Panel Rules of Procedure, it has failed to do so, and the direction given by the Appeal Panel to this effect in compliance with Article 14 of the Appeal Panel Rules of Procedure was not duly complied with by the Appellant – the appeal must be decided in accordance with Article 14 of the Appeal Panel Rules of Procedure.

On those grounds, the Appeal Panel hereby

Dismisses the appeal in accordance with Article 14 of the Appeal Panel Rules of Procedure.

Helen Louri-Dendrinou

Kaarlo Jännäri

Luis Silva Morais
Vice-Chair

Marco Lamandini
Rapporteur

Christopher Pleister
Chair