

16 August 2017

case 25/17

DECISION

**[Appellant] and
[Appellant]
appellants**

v

the Single Resolution Board

Yves Herinckx, Vice-Chair
Eleni Dendrinou-Louri
Kaarlo Jännäri
Marco Lamandini
Luis Silva Morais

DECISION

In Case 25/17,

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] and [Appellant], [address], Spain, appellants,

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. An application was received by the Secretariat of the Appeal Panel on 19 July 2017, addressed to the Single Resolution Board and stating that it constituted an optional revision appeal pursuant to the provisions of articles 123 *et seq.* of the Spanish Law 39/2015 of 1 October on the Common Administrative Procedure of the Public Administrations. On 20 July 2017 the Secretariat wrote to Mr [Appellant] and Mrs [Appellant] and asked to clarify whether the application should be considered as an appeal to the Appeal Panel. Mr [Appellant] and Mrs [Appellant] responded in the affirmative on 20 July 2017.
2. Mr [Appellant] and Mrs [Appellant] allege to be shareholders of Banco Popular Español, S.A. (“Banco Popular”) and seek 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 implementation of the abovementioned decision of the Single Resolution Board, 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 an annulment decision.

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 shareholders of Banco Popular as we have lost such status of shareholder.

4. On 24 July 2017, the Vice-Chair of the Appeal Panel informed Mr [Appellant] and Mrs [Appellant] that, on a preliminary analysis, the contested decision appeared to fall outside the Appeal Panel's jurisdiction. The Vice-Chair requested Mr [Appellant] and Mrs [Appellant] to submit by 27 July 2017 their observations on the admissibility of the appeal and to advise by the same date if they wished to make oral representations. Mr [Appellant] and Mrs [Appellant] filed observations on 27 July 2017. The Board did not respond.

(2) Arguments of the parties

5. Mr [Appellant] and Mrs [Appellant] contend that the Appeal Panel has jurisdiction in respect of decisions made pursuant to Article 10 of the SRMR, that Article 10 requires that resolution plans drafted by the Board be compliant with the SRMR, and that the contested decision does not comply with the SRMR. In particular, the contested decision breaches Articles 24, 30, 31, 32, 36, 37, 39, 46, 48, 49, 52, 57, 61, 62, 66, 116 and 121 of the SRMR. The Appeal Panel has jurisdiction with regard to matters referred to in Article 10 and the appeal is, therefore, admissible.

(3) Findings of the Appeal Panel

6. 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.

7. Article 10(10) of the SRMR, which is referred to in Article 90(3) and defines one of the types of decisions that are appealable to the Appeal Panel, deals with the removal of so-called impediments to resolvability. This bears no relation to the subject matter of the contested decision.
8. 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.