



**15 April 2020**

Case 2/2020

# **FINAL DECISION**

[.],

**Appellant,**

**v**

**the Single Resolution Board**

Christopher Pleister, Chair  
Luis Silva Morais, Vice-Chair  
David Ramos Muñoz, Rapporteur  
Helen Louri-Dendrinou  
Kaarlo Jännäri

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**FINAL DECISION**

In Case 2/20

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”),

[.], with address for service in [.], (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), David Ramos Muñoz (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 10 February 2020 (hereinafter the “Confirmatory Decision”) rejecting the Appellant’s confirmatory application, by which the Appellant requested the SRB 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 documents<sup>2</sup> (hereinafter ”Regulation 1049/2001”), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents<sup>3</sup> (hereinafter ”Public Access Decision”).
2. By his initial email of 11 September 2019, the Appellant requested access to the following documents: (a) dates of beginning and end of the SRB’s internal investigation regarding the “leaks” related to the Banco Popular resolution (the “Internal Investigation”); (b) all the documentation related to the Internal Investigation and its conclusions; (c) the cost of the Internal Investigation; and (d) whether any other organization, such as OLAF, intervened in the Internal Investigation.

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

<sup>2</sup> OJ L 145, 31.5.2001, p. 43

<sup>3</sup> SRB/ES/2017/01.

3. In its Initial Response of 17 December 2019 the SRB communicated the Appellant that its requests under (a), (c) and (d) could not be granted, as they were requests of information, and thus fell outside the scope of rules on access to documents. In relation to the request under (b), the SRB stated that it had not found any document that it could grant access to, as they were covered by the exception under Article 4 (3) second subparagraph, Article 4 (2) second indent, and Article 4 (2) third indent, of Regulation 1049/2001.
4. On the same 17 December 2019 the Appellant sent an email with a confirmatory application, which was registered by the SRB on the 20 December 2019, with reference number Ares (2019)7853847, and processed in accordance with articles 90(1) of Regulation 806/2014, article 8 Regulation 1049/2001, and article 8 of the Public Access Decision. On 10 February 2020 the Board adopted the Confirmatory Decision which is the subject matter of the appeal in the instant case.
5. On 12 February 2020 the Appellant sent an email to the Appeal Panel contesting the Confirmatory Decision, attaching the Confirmatory Decision to such email.
6. On 21 February 2020, the Appeal Panel, seeing the overly broad and imprecise nature of the Appellant's statements in the above-mentioned email, nonetheless decided to request the Appellant to clarify the grounds on which the appeal was based. The Appellant sent his reply on 26 February 2020.
7. On 2 March 2020 the Appeal Panel, having determined that this is a case where admissibility must be examined before any consideration of the merit, according to Article 5(4)(a) and 9(2) of the Rules of Procedure, asked the parties to submit within two weeks their written submissions on the admissibility of the appeal.
8. The SRB requested an extension of the deadline to make its submissions, which was granted, pursuant to article 6 (4) of the Rules of Procedure. Later, it requested an additional extension, due to the exceptional and unprecedented situation resulting from the Covid-19 pandemic and ensuing measures. The Appeal Panel granted this second extension as well pursuant to article 8(1) of the Rules of Procedure. On 30 March 2020 the SRB filed its response.
9. Both parties have made their written submissions.
10. On 8 April 2020 the Appeal Panel, having considered the submissions of both Parties notified the Parties that the Chair considered that the appeal had been lodged for the purposes of Article 85(4) of Regulation 806/2014 and 20 of the Rules of Procedure as to the determination on the admissibility of the appeal.

### **Main arguments of the parties**

11. The main arguments of the parties are briefly summarised below. It is 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.

**Appellant**

12. The Appellant challenges the Confirmatory Decision claiming that he has the right to access the requested documents. He claims that he has requested dates, costs, documents, access to which is systematically denied by the SRB, and alleges that the SRB ignores the EU case law on transparency, through the systematic and unjustified denial of access to information. He adds other remarks, including a reference to the domestic legal procedures currently taking place in Spain, depositions by the Bank of Spain auditors, declarations by the Chair of the SRB, and others, and makes reference *inter alia* to the credibility of the SRB. The Appellant completes this with a general reference to Articles 11, 41, 42 and 44 of the EU Charter of Fundamental Rights, and Article 352 of the Treaty on the Functioning of the European Union (TFEU).

**Board**

13. The Board argues that the appeal is inadmissible because the Appellant fails to openly request a review of the Confirmatory Decision, fails to state any valid grounds to contest the part of the Decision denying access to documents (request under letter b), and fails to provide any evidence on any change of (legal and factual) circumstances that would warrant a reassessment of the accessibility of the requested documents. According to the SRB, the Appellant does not contest errors in the application of Regulation 1049/2001, but merely refers to alleged breaches of articles of the EU Charter of Fundamental Rights, and puts forward vague statements without any further argumentation, and thus fails to comply with Article 5 of the Rules of Procedure. Finally, in his reference to the legal representation of the Appeal Panel in pending cases before the General Court of the European Union, the Appellant introduces a statement unrelated to the Confirmatory Decision, and outside the scope of the appeal.

**Findings of the Appeal Panel**

14. This is a case that illustrates the relevance of the admissibility step in an appeal. The Appeal Panel notes that the Appellant has already filed, in the past, numerous appeals [.]. He is, thus, necessarily familiar, at this stage, with the Rules of Procedure governing the appeals before the Appeal Panel.
15. According to Article 5 of the Rules of Procedure, a party wishing to bring an appeal against a decision of the Board under Article 85(3) Regulation 806/2014 shall do so by way of a “notice of appeal”. The appellant needs to (1) identify the decision subject to the appeal, (2) use the language of the decision, (3) annex (or attach) the appealed decision; *and* importantly (4) include (a) a statement of why the appeal is admissible under article 85 (3) Regulation 806/2014; (b) a statement of grounds on which it is based; (c) a statement of the grounds to justify a suspension of the decision’s effect, if a request for such suspension is made; and (d) the documents on which the appellant intends to rely (article 5 of the Rules of Procedure, sections (1)-(4)). If the appellant does not wish to suspend the effects of the Confirmatory

Decision, nor does he intend rely on specific documents, it suffices with a statement of why the appeal is admissible, and of the grounds on which it is based.

16. These requirements are not exacting and are sufficiently straightforward. They are also necessary. It is the appellant's initiative that sets the procedure in motion, and it is the appellant's responsibility to provide the grounds for the Appeal Panel to decide. The terms used by the Rules of Procedure, such as "statement of grounds", are clear, but also sufficiently open to make room for a case-by-case assessment of the circumstances, including the fact of whether the appellant is represented or not by counsel ensuring the widest possible access to Appeal Panel review. And yet, there has to be a minimum requirement. That minimum is not determined by a mere appearance of rightness, or by whether the document requested is important in and of itself. It is determined by the minimum content that enables the Appeal Panel to understand what is being appealed, and on what grounds. This is what enables the Appeal Panel to adjudicate on the actual dispute, and not on a hypothetical one.
17. These basic elements are duly exemplified by this case. The appellant requested access to the documents related to the SRB's internal investigation of the "leaks". A similar request was presented in the appeal in case 9/2019. The Appeal Panel rendered its decision on case 9/2019 on 20 April 2020 and it considered that the appellant was right as far as that specific request was concerned, because it provided grounds that were clearly identifiable, and more convincing than the arguments put forward by the SRB to justify non-disclosure. Regardless of the outcome, there was an identifiable appeal, and related dispute for the Appeal Panel to decide. Conversely, in this case, although the Appellant partly requested the same documents (and documents which shall be disclosed to the public in due course by the Board in compliance with the Appeal Panel decision in case 9/2019), there is a clear contrast. The Appellant did not provide arguments and reasoning to justify his access to the documents. Thus, there are no elements that satisfy the basic and necessary procedural requirement that the grounds of the appeal must be stated by the Appellant. As a result, in the instant case, the appeal cannot be considered admissible.

On those grounds, the Appeal Panel hereby

**Dismisses the appeal as inadmissible.**

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Helen Louri-Dendrinou

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Kaarlo Jännäri

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Luis Silva Morais  
Vice-Chair

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David Ramos Muñoz  
Rapporteur

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Christopher Pleister  
Chair

For the Secretariat of the Appeal Panel: