

9 November 2017

Case 35/17

DECISION

[Appellant],

v

the Single Resolution Board

Christopher Pleister, Chair
Yves Herinckx, Vice-Chair
Kaarlo Jännäri
Marco Lamandini
Luis Silva Morais

DECISION

In Case 35/17,

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],

v

the Single Resolution Board, represented by Dr Elke König, Chair, the “SRB”,

together the “Parties”,

THE APPEAL PANEL,

composed of Christopher Pleister, Yves Herinckx, Vice-Chair, 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 03 August 2017, addressed to the Single Resolution Board. On 10 August 2017 the Chair wrote to the Appellant and the SRB acknowledging receipt of the appeal and informing the Parties of the deadlines for submission of their observations on the admissibility of the appeal (by 11 August 2017 for the SRB and 18 August 2017 for the Appellant). Only the Appellant responded (on 14 August 2017), repeating its initial argumentation. Neither Party requested for an oral representations.
2. The Appellant alleges to be shareholder of Banco Popular Español, S.A. (“Banco Popular”) and seeks the annulment 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 requests by the Appellant read as follows:

FIRST REQUEST: To annul the resolution;

SECOND REQUEST: To acknowledge the consequences of the incorrect decision-making, whether on the basis of a lack of transparency or the failure to take earlier preventive measures and avoid the financial loss suffered by shareholders through depreciation of their shares.

(2) Arguments of the Parties

4. The Appellant contends that the Appeal Panel has jurisdiction in respect of decisions made pursuant to Article 11 of the SRMR. The Appellant further contends that the contested decision does not comply with lit. d) and f) of Article 10 (11) and in this respect breaches Articles 24 to 27 of the SRMR and is also in non-compliance with Recitals 52 f. of the SRMR.

(3) 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 transparency regime addressed in Article 90 of the SRMR requires a request by the Appellant to the SRB on access documents, which is subsequently denied by the SRB. The Appellant does not refer to a denied request. Instead, the Appellant links the lack of transparency to an incorrect resolution decision making.
7. The contested decision in turn 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.**

Christopher Pleister
Chair

Yves Herinckx
Vice-Chair

Kaarlo Jännäri

Marco Lamandini

Luis Silva Morais

This decision is signed in Spanish and in English. The Spanish version shall be considered authentic.