

9 November 2017

Case 36/17

DECISION

[Appellant],

v

the Single Resolution Board

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

DECISION

In Case 36/17,

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,

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 04 August 2017, addressed to the Single Resolution Board 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 7 August 2017 the Secretariat wrote to the Appellant and asked to clarify whether the application should be considered as an appeal to the Appeal Panel. The Appellant responded in the affirmative on 10 August 2017.
2. The Appellant alleges to be shareholder of Banco Popular Español, S.A. (“Banco Popular”) and seeks the annulment of the decision of the Spanish FROB (Fondo de Reestructuración Ordenada Bancaria) dated 7 June 2017 implementing the Board’s decision of the same date whereby the Board placed Banco Popular under resolution and adopted a resolution scheme and 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:

REQUEST: for review of the implementation of the decision by the SRB, and to adopt an annulment decision;

SUBSIDIARY REQUEST: to, in the absence of the above, suspend implementation measures carried out by the FROB.

On 8 September 2017, the Chair of the Appeal Panel informed the Appellant that, on a preliminary analysis, the contested decision appeared to fall outside the Appeal Panel's jurisdiction. The Chair requested the Appellant to submit by 15 September 2017 his observations on the admissibility of the appeal and to advise by the same date if he wished to make oral representations. The Appellant did not file any further observations, nor did the SRB (deadline set for 22 September 2017).

(2) Findings of the Appeal Panel

4. 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.
5. 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 and which is therefore not appealable to the Appeal Panel.
6. Regarding the subsidiary request, the Appeal Panel can also not respond to Appellant's request as it cannot suspend implementation measures carried out by the FROB with regard to the resolution decision by the SRB.

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.