7 September 2017
Case 37/17

PROCEDURAL ORDER NO. 1

[Appellant],

v

the Single Resolution Board

Christopher Pleister, Chair,
Marco Lamandini, Rapporteur,
Yves Herinckx, Vice-Chair,
Kaarlo Jännäri,
Luis Silva Morais
PROCEDURAL ORDER NO. 1

In Case 37/17,


[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, Yves Herinckx, Vice-Chair, Kaarlo Jännäri, Luis Silva Morais

Whereas:

1. This appeal relates to the SRB decision of 16 August 2017 rejecting the Appellant’s confirmatory application of 24 July 2017 (hereinafter ”Confirmatory Application”), by which he requested the SRB to reconsider its position in relation to his initial request of 11 July 2017 (hereinafter ”Initial Request”) and the SRB’s response thereto in a letter dated 20 July 2017 (hereinafter ”Initial SRB Response”), 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 (hereinafter "Regulation 1049/2001"), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents (SRB/ES/2017/01, hereinafter ”Public Access Decision”), which, in accordance with Article 90(2) of Regulation 806/2014, lays down the practical measures for applying Regulation 1049/2001.

2. By the Initial Request and the Confirmatory Application the Appellant requested access to the provisional valuation report (hereinafter ”Valuation Report”) that was drawn up in the context of the decision of the SRB of 7 June 2017 concerning the adoption of a resolution scheme in respect of Banco Popular Español, S.A. (SRB/EES/2017/08, hereinafter the ”Resolution Decision”).

3. The request for an appeal was originally submitted by the Appellant by email of 23 August 2017. The Appeal Panel acknowledged receipt of such request by email of 30 August 2017, noting however that, although the request had been provisionally registered as case No.37/17, in order to consider such request as an appeal regularly filed with the Appeal Panel, the Appeal Panel required the following information according to Article 5 of the Appeal Panel’s Rules of Procedure (the “RoP”): (i) registered address and proof on the appellant’s identity (e.g.
copy of valid ID) and (ii) evidence that the appellant has been a shareholder/bondholder of Banco Popular at the time of its resolution.

4. The Appellant submitted the requested information by email of 4 September 2017, together with the SRB decision of 16 August 2017 and a Banco Popular communication to CNMV of 11 May 2017.

THE APPEAL PANEL MAKES THE FOLLOWING PROCEDURAL ORDER

5. This procedural order determines the date of the appeal and deals with the next steps of the proceedings and with certain other organisational matters.

A. DATE OF THE APPEAL AND NEXT STEPS OF THE PROCEEDINGS

6. The date of the notice of the appeal is 4 September 2017.

7. Rapporteur in the present case is the Member of the Appeal Panel Mr. Marco Lamandini.

8. The Board’s response shall be served on the Appellant and filed with the Appeal Panel Secretariat within the deadline set out in Article 6(4) of the RoP.

9. The Appellant is authorized to file a reply to the Board’s response. The reply shall be served on the Board and filed with the Appeal Panel Secretariat within two (2) weeks of the serving of the Board’s response.

10. Should the Appellant or the Board require to make oral representation before the Appeal Panel according to Article 85(7) of Regulation 806/2014:

(a) the Appellant shall make this request with his reply to the Board’s response, or – failing such reply – with a communication to the Appeal Panel Secretariat by the deadline set in point 9 of this order;

(b) the Board shall make this request with a communication to the Appeal Panel Secretariat within (1) week after the expiry of the deadline set in point 9 of this order.

11. The Parties are invited to address in their written submission also the question whether:

(a) Article 90(4) of the SRMR should be read as imposing limitations to the general regime of access to documents laid out by Regulation No. 1049/2001; or

(b) Article 90(4) of the SRMR should be read as setting out a distinct regime of access to documents (or at least to some of the Board’s documents) so that applicants are entitled to obtain access to documents under either the regime of Regulation No. 1049/2001 or the regime of Article 90(4) of the SRMR and/or applicants which cannot rely on Article 90(4) of the SRMR because the conditions set out herein are not met can however rely on Regulation No. 1049/2001.
B. CONFIDENTIAL COMMUNICATION TO THE APPEAL PANEL OF THE VALUATION REPORT

12. In order to rule in the case, it is necessary for the Appeal Panel to examine, under strict confidentiality *vis-à-vis* the Appellant, the full content of the Valuation Report.

13. For this purpose, as a proportionate measure of inquiry weighing confidentiality against the right to an effective legal remedy at this stage of the proceedings, having regard also to Article 104 of the General Court’s Rules of Procedure, the Appeal Panel orders the Board to, deposit with the Appeal Panel Secretariat, within one (1) week of service of this procedural order and at the SRB premises, one or more numbered hardcopies available to the Appeal Panel Members for inspection only. Subject to the adoption of appropriate technological means, the Board shall also make available an electronic copy allowing, with appropriate security measures, access to the Appeal Panel Members from remote devices for inspection only. Any documents provided shall neither be communicated to the Appellant nor shall be part of the file of these proceedings open to the access of the Appellant.

14. This procedural order is for immediate communication to the parties by the Appeal Panel Secretariat.

____________________  ____________________  ____________________
Luis Silva Morais     Kaarlo Jännäri          Yves Herinckx
Vice-Chair

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Marco Lamandini       Christopher Pleister
Rapporteur            Chair