

## NOTICE OF THE SINGLE RESOLUTION BOARD

of 2 August 2018

**regarding its preliminary decision on whether compensation needs to be granted to the shareholders and creditors in respect of which the resolution actions concerning Banco Popular Español S.A. have been effected and the launching of the right to be heard process**

**(SRB/EES/2018/132)**

### 1. Procedure

- (1) On 7 June 2017, the Single Resolution Board (the “**SRB**” or the “**Board**”) adopted a decision concerning the adoption of a resolution scheme in respect of Banco Popular Español S.A.<sup>1</sup> (the “**Resolution Decision**”). Following the endorsement of the Resolution Decision by the European Commission,<sup>2</sup> the SRB notified its decision to FROB, which, on the same day, adopted the necessary measures to implement the Resolution Decision.
- (2) Following the implementation of the Resolution Decision, Deloitte Reviseurs d’Entreprises<sup>3</sup> (“**Deloitte**” or the “**Valuer**”) performed a valuation of difference in treatment as referred to in Article 20(16) and (17) of Regulation (EU) No 806/2014<sup>4</sup> (“**Valuation 3**”). On 14 June 2018,<sup>5</sup> the SRB received by mail Deloitte’s final report on the Valuation 3 (“**Valuation 3 Report**”) in respect of the resolution of Banco Popular Español S.A. (the “**Institution**”), attached to this Notice as Annex 1.

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<sup>1</sup> SRB/EES/2017/08, OJ C 222, 11.7.2017, p. 3.

<sup>2</sup> Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español S.A., OJ L 178, 11.7.2017, p. 15.

<sup>3</sup> In accordance with the relevant specific contract, Deloitte Reviseurs d’Entreprises could engage personnel from other member firms of the Deloitte network. In order to perform the Valuation of difference in treatment, Deloitte Reviseurs d’Entreprises engaged personnel from the offices of Deloitte in Spain and the United Kingdom.

<sup>4</sup> 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, OJ L 225, 30.7.2014, p.1.

<sup>5</sup> A soft copy of the Valuation 3 Report was received by the SRB by e-mail on 13 June 2018. The attached Valuation 3 Report reflects the changes made to it by Deloitte’s addendum (received by the SRB by e-mail on 31 July 2018), which corrected the following clerical errors:

- (i) In table “Estimated assets realisation values in liquidation” on page 8, the estimate of the assets realization value for “joint ventures, associates and subsidiaries” in the worst case of the liquidation scenarios was amended from “7,494” to “7,496”. The same change was implemented in table “Banco Popular legal entity; 18 months, 3 years and 7 years” on page 70.
- (ii) The title of the graph on page 9 was amended from “NCWO Outcome for Banco Popular legal entity (Creditor losses) (€m)” to “NCWO Outcome for Banco Popular legal entity (Creditor losses) (€bn)”;
- (iii) In table “JV, Subsidiaries & Associates NBV” on page 55, the column named “Best case” was renamed to “Worst case” and the column named “Worst case” was renamed to “Best case”. The same change was implemented in table “JV, Subsidiaries & Associates realisation” on page 57.

## 2. Description of the resolution action

- (3) Pursuant to Articles 5 and 6 of the Resolution Decision, the resolution action in respect of the Institution consisted in the application of the sale of business tool to transfer the shares in the Institution to Banco Santander S.A. (under Article 24(1)(a) of Regulation (EU) No 806/2014), following the exercise of the powers to write down and convert the capital instruments of the Institution (under Article 21 of that Regulation).
- (4) In detail, by its Resolution Decision, the SRB instructed FROB to take all the necessary measures to:
- (i) write down the nominal amount of the Institution's share capital by cancelling 100% of the shares under ISIN code ES0113790531 ("**Existing Shares**");
  - (ii) convert the whole principal amount of the Additional Tier 1 instruments of the Institution and outstanding as at the date of resolution, listed in Article 6.1.b) of the Resolution Decision<sup>6</sup> ("**Additional Tier 1 instruments**"), into newly issued shares of the Institution ("**New Shares I**") and write down the nominal amount of the New Shares I to zero, resulting in the cancellation of 100% of the New Shares I; and
  - (iii) convert the whole principal amount of the Tier 2 instruments of the Institution and outstanding as at the date of resolution, listed in Article 6.1.d) of the Resolution Decision<sup>7</sup> ("**Tier 2 instruments**"), into newly issued shares of the Institution ("**New Shares II**") and transfer the New Shares II to Banco Santander S.A. for a consideration of EUR 1. The latter consideration was used to first pay all the reasonable expenses and costs of the resolution authority.

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#	Item (ISIN)	Nominal value (in EUR)
1	XS0288613119	5,400,000 €
2	DE0009190702	64,695,000 €
3	DE000A0BDW10	19,115,000 €
4	XS0225590362	7,359,000 €
5	XS0979444402	499,985,000 €
6	XS1189104356	749,988,000 €

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#	Item (ISIN)	Nominal value (in EUR)
1	ES0213790001	99,700,000 €
2	ES0213790019	200,000,000 €
3	ES0213790027	250,000,000 €
4	XS0550098569	91,700,000 €
5	SUBORDINATED DEBT TOTALBANK 1	10,978,957 €
6	SUBORDINATED DEBT TOTALBANK 2	10,978,957 €
7	SUBORDINATED DEBT TOTALBANK 3	10,978,957 €
8	SUBORDINATED DEBT TOTALBANK 4	10,978,957 €

- (5) By its decision of 7 June 2017<sup>8</sup>, FROB adopted the measures required to implement the SRB's Resolution Decision.

### 3. Assessment of the difference in treatment in resolution

#### 3.1. Legal Framework

- (6) In order to ensure that any limitations on the rights of shareholders and creditors comply with Articles 17 and 52 of the Charter of Fundamental Rights of the European Union ("CFREU"), Article 15(1)(g) of Regulation (EU) No 806/2014 provides for the no creditor worse off ("NCWO") principle, i.e. that affected shareholders and creditors should not incur greater losses than those which they would have incurred had the entity been wound up under normal insolvency proceedings.
- (7) In line with this principle, Article 20(16) of Regulation (EU) No 806/2014 requires the Board to ensure that a valuation is carried out by an independent valuer as soon as possible after the resolution action has been effected. In accordance with Article 20(17) of Regulation (EU) No 806/2014 and Article 3 of the Commission Delegated Regulation (EU) 2018/344<sup>9</sup>, this valuation, i.e. the Valuation 3, shall determine:
- (i) the treatment that shareholders and creditors in respect of which resolution actions have been effected, or the relevant deposit guarantee scheme, would have received had the entity entered into normal insolvency proceedings at the time when the resolution decision is taken, disregarding any provision of extraordinary public financial support;
  - (ii) the value of the restructured claims or other proceeds received by the above shareholders and creditors as at the actual treatment date, discounted back to the date when the resolution decision is taken, if necessary; and
  - (iii) whether the outcome of the treatment under (i) exceeds the outcome of the value referred to in point (ii) for each creditor.
- (8) When performing such valuation, the criteria relating to the methodology for Valuation 3, as set out in the Commission Delegated Regulation (EU) 2018/344, shall be followed.
- (9) Any difference in treatment resulting in greater losses in resolution for particular shareholders and creditors in respect of which resolution action has been effected entitles those shareholders and creditors to compensation from the Single Resolution Fund, pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014.

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<sup>8</sup> 7 June 2017 Resolution of the FROB Governing Committee adopting the measures required to implement the Resolution Scheme.

<sup>9</sup> Commission Delegated Regulation (EU) 2018/344 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution, OJ L 67, 9.3.2018, p. 3.

### **3.2. Appointment of Deloitte to perform the Valuation of difference in treatment in the resolution of the Institution**

- (10) On 23 May 2017, in the context of its preparation for a potential resolution of the Institution and following a procurement procedure, the SRB hired Deloitte as an independent valuer.
- (11) In particular, Deloitte was awarded with the relevant specific contract<sup>10</sup> following a reopening of competition in the context of the multiple framework contract for services (No SRB/OP/1/2015, Lot 2) which the SRB had signed with six firms, including Deloitte. The selection of Deloitte as independent valuer through the above procurement procedure ensures that Deloitte possesses the necessary qualifications, experience, ability, knowledge and resources to carry out the valuations effectively without undue reliance on any relevant public authority or the Institution. Moreover, Deloitte qualified as a legal entity independent from public authorities and the Institution within the meaning of Article 20(1) of Regulation (EU) No 806/2014. Deloitte was fully independent from the SRB and has not been engaged for the annual accounting work of BPE. Lastly, Deloitte has undertaken an internal conflict check in accordance with applicable professional standards. Based on the outcome of that conflict check, Deloitte considered itself not to be conflicted with respect to its appointment as independent valuer.
- (12) On the basis of the above, the SRB considered that the appointment of Deloitte as independent valuer was in line with the requirements of Article 20(1) of Regulation (EU) No 806/2014 and Chapter IV of the Commission Delegated Regulation (EU) 2016/1075<sup>11</sup>.
- (13) In accordance with the contract between the SRB and Deloitte, the assignment of Deloitte included, *inter alia*, to perform, after a potential resolution action, a valuation of difference in treatment as referred to in Article 20(16) and (17) of Regulation (EU) No 806/2014<sup>12</sup>.
- (14) Following the implementation of the Resolution Decision by FROB, Deloitte performed the Valuation 3 in the context of the resolution of the Institution.

### **3.3. Valuation 3 Report of Deloitte**

- (15) When performing the Valuation 3 in the context of the Institution's resolution, Deloitte took into account Regulation (EU) No 806/2014 and the Commission Delegated Regulation 2018/344.

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<sup>10</sup> Specific contract No. 8 implementing framework contract No SRB/OP/1/2015 - Lot 2, 23 May 2017

<sup>11</sup> Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges, OJ L 184, 8.7.2016, p. 1.

<sup>12</sup> 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, OJ L 225, 30.7.2014, p.1.

(16) The Valuation 3 Report assessed the elements under recital (7) of this Notice.

### **3.3.1. Treatment of affected shareholders and creditors under normal insolvency proceedings**

(17) First, the Valuer had to determine the treatment that shareholders and creditors in respect of which resolution actions have been effected would have received if the Institution had entered into normal insolvency proceedings at the time when the resolution decision was taken.

(18) For the purposes of the Valuation 3 Report, *"shareholders and creditors in respect of which resolution actions have been effected"* pursuant to Article 3 of the Commission Delegated Regulation (EU) 2018/344 were considered as referring to the holders of Existing Shares, of Additional Tier 1 capital instruments and of Tier 2 capital instruments listed in recital (4) of this Notice ("**Affected Shareholders and Creditors**").<sup>13</sup>

(19) In line with Article 20(18)(a) of Regulation (EU) No 806/2014 and Article 1(1) of the Commission Delegated Regulation (EU) 2018/344, the reference date of the Valuation 3 was the date of the Resolution Decision, i.e. 7 June 2017 ("**Resolution Date**"). In this regard, the Valuation 3 Report was based on financial information as at 6 June 2017 when available. When reliable information as at 6 June 2017 was not possible to be obtained despite all reasonable efforts made, the Valuer either used information as at 31 May 2017 for areas where the variations during that 6-day period were not considered material or used appropriate assumptions or proxies and focused on the most material items in terms of their potential impact on Affected Shareholders and Creditors.

(20) In accordance with the Valuation 3 Report, in light of the circumstances of the case and in particular, the inability of the Institution to pay its debts as they fall due, the initiation of normal insolvency proceedings at the Resolution Date would have resulted in the liquidation of the Institution, which would have entailed an accelerated realisation of assets, with no minimum binding price, and payment of net realisation to creditors in accordance with the hierarchy established by the Spanish Act 22/2003 of 9<sup>th</sup> July 2003 on Insolvency ("**Spanish Act 22/2003**"). Once the liquidation would have started, the Court would have appointed a liquidator, whose main function is to collect in the assets of the entity, realise them and distribute the proceeds to creditors, according to the legally prescribed creditor hierarchy.

(21) Moreover, in framing the liquidation scenario, the Valuer considered the macroeconomic context as anticipated at the Resolution Date. In this regard, the Valuer used the Spring 2017 Economic Forecast by the European Commission as a reference point for expectations as of the Resolution Date of the macroeconomic conditions in the years during which the liquidation of the Institution would occur. Nonetheless, the Valuer has not considered the impact of the liquidation of the Institution, one of the main banks in

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<sup>13</sup> The DGS was not used in resolution and therefore it is not included in the definition of Affected Shareholders and Creditors.

Spain, on the rest of the financial sector and the Spanish economy, which could have contributed to the deterioration of the macroeconomic conditions and therefore to reduced recovery rates in a hypothetical insolvency scenario.

- (22) Given that the insolvency proceedings under the Spanish Act 22/2003 are applied on a legal entity basis, the Valuation 3 Report estimated the outcome of the hypothetical liquidation proceedings for the Institution on an entity basis. However, given that the liquidation of the Institution would have consequences on the rest of the Banco Popular Group (the "**Group**"), the impact of the Institution's liquidation on the rest of the Group was also considered.
- (23) The Valuer noted that the liquidator's ultimate objective would have been to carry out the asset realisation in a reasonable period. In this regard, the Valuer considered a number of alternative scenarios and possible strategies that a liquidator might have applied to maximise realisations to creditors in a reasonable period. Taking into account the Spanish regulatory framework which provides for a liquidation phase of the insolvency proceedings of one-year period, after which any relevant party can request the replacement of the liquidator in case of undue prolongation of this phase, and the complexity of the hypothetical liquidation proceedings of the Institution, the Valuer assessed three alternative time scenarios, with the Valuer assuming that the longer periods would have allowed enhanced recoveries through a more orderly disposal and work out of assets:
- (i) a liquidation period of 18 months;
  - (ii) a liquidation period of 3 years; and
  - (iii) a liquidation period of 7 years.
- The Valuer considered that in terms of how different creditors assess the liquidation plan, the suspension of payment of interest following the initiation of liquidation may be important since higher ranked creditors may consider that they are unlikely to be compensated for delays in repayment of amounts due while the suspension of interest could be of benefit to creditors who rank lower in the creditor hierarchy. Against that background, the Valuer considered that it would be unreasonable to require creditors to wait longer than 7 years for the liquidation to complete.
- (24) The Valuer considered the liquidator's approach to maximising the value of the assets and distributing realisations to creditors. For each asset class, the Valuer applied specific assumptions on its valuation methodologies to estimate the recovery value (in cash terms) based on the liquidator's anticipated realisation strategy. Where the outcome of the asset realisation strategies is dependent on factors that cannot be known with certainty, the Valuer presented a best-case and a worst-case scenario within each of the three alternative time scenarios. The Valuer estimated that based on the updated balance sheet with EUR 126.3 billion of assets as at 6 June 2017, the liquidator would have been able, depending on the scenario, to recover between EUR 95.1 billion (in the worst case of the 18 months liquidation period scenario) and EUR 104.1 billion (in the best case of the 7 years liquidation period scenario).

- (25) The estimated realisation value of each asset class as well as the estimate of liquidation costs, for each of the scenarios have been summarised by the Valuer in Table 1.

**Estimated assets realisation values in liquidation**  
(€m)

Assets	NBV (6 June 2017)	18M Scenario		3Y Scenario		7Y Scenario	
		Best Case	Worst Case	Best Case	Worst Case	Best Case	Worst Case
Equity, fixed income and derivatives portfolios <sup>(1)</sup>	21,543	20,410	20,392	20,410	20,392	20,410	20,392
Loans and receivables	83,330	66,521	63,430	68,499	65,660	71,069	68,579
Joint ventures, associates and subsidiaries	9,908	8,382	7,496	8,382	7,496	8,382	7,496
Real Estate assets	3,728	2,514	2,252	2,832	2,624	2,946	2,758
Intangible assets	1,198	-	-	-	-	-	-
Tax assets	5,692	2,334	2,334	2,334	2,334	2,334	2,334
Other assets	1,045	166	166	166	166	166	166
<b>Total insolvency realisation</b>		<b>100,327</b>	<b>96,067</b>	<b>102,624</b>	<b>98,669</b>	<b>105,307</b>	<b>101,722</b>
Liquidation costs		(990)	(989)	(1,078)	(1,077)	(1,193)	(1,192)
<b>Total realisation for shareholders &amp; creditors</b>		<b>99,338</b>	<b>95,078</b>	<b>101,546</b>	<b>97,593</b>	<b>104,114</b>	<b>100,531</b>

(1): Equity, fixed income and derivatives portfolios includes cash and cash with the Central Banks totaling €1,334m, and excludes fixed income from the loans and receivables portfolio of €654m

Source: Banco Popular Individual Financial Statements; Deloitte analysis

Table 1: Estimated assets realisation values in liquidation

- (26) The Valuer established the list of creditor claims in Table 2 below, which also includes additional claims which could have arisen during the liquidation proceedings, but were not recognised on the Institution's balance sheet on 6 June 2017. In this regard, the Valuer estimated that the legal contingencies would amount to EUR 1.79 billion in the best case scenario and to EUR 3.45 billion in the worst case scenario.

**Creditor Hierarchy**  
(€bn)

Banco Popular Creditor Hierarchy		
	Covered creditor	49.9
	Claims against the estate	1.0 / 1.1 / 1.2 <sup>1</sup>
	General privileged creditor	33.1
	Unsecured creditors	24.3 / 26.0 <sup>2</sup>
	Including legal contingencies	+1.8 / 3.4 <sup>2</sup>
	Subordinated claims	10.8

(1): 18 M / 3 Y / 7 Y respective

(2): Best and worst case respectively

Source: Banco Popular Individual Financial Statements, Deloitte analysis

Table 2: Creditor Hierarchy

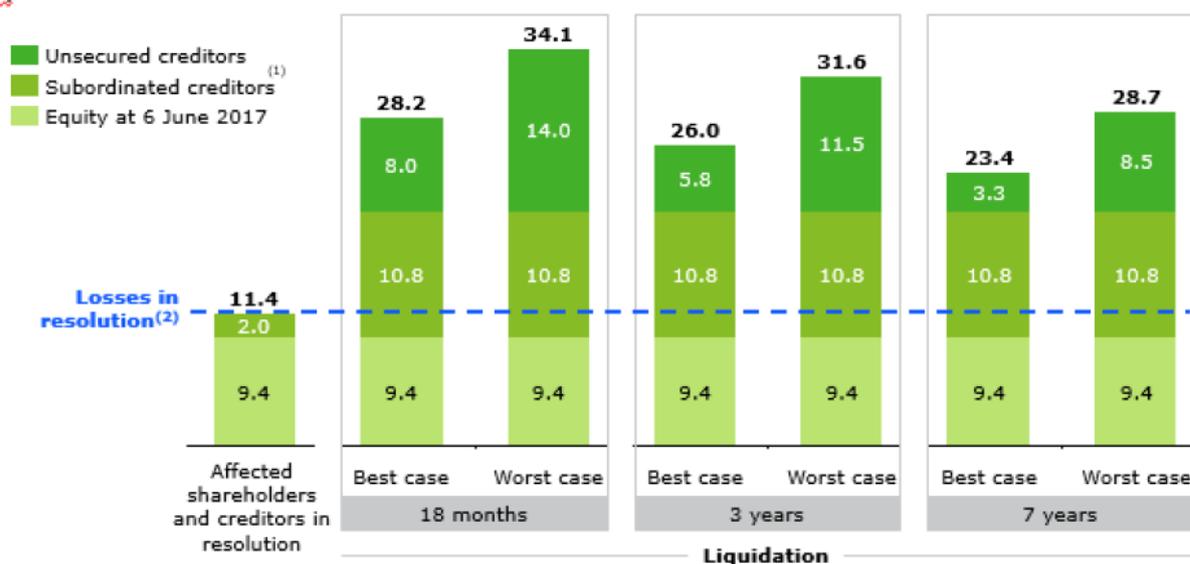
- (27) Subordinated claims include the following main sub-categories, which rank in the following descending order of priority:
- (i) claims subordinated by contract, including the AT1 and T2 instruments which have been written down or converted and transferred to Banco Santander S.A. (EUR 2.04 billion);
  - (ii) claims consisting in charges or interest rates (EUR 0.1 billion); and

- (iii) intra-group claims, which are subordinated to the lowest level of claims.

(28) The Valuer then allocated the total realisation for shareholders and creditors in each of the three time scenarios (see Table 1) to the claims, in accordance with their ranking under the applicable insolvency law (see Table 2). The outcome of the allocation of asset realisations to creditor claims would have resulted in the shortfalls (Creditor losses) displayed in Exhibit 1:

**NCWO Outcome for Banco Popular legal entity (Creditor losses)**

(€bn)



(1) This includes €2.0bn of subordinated debt and €8.6bn of intra-group debt, totaling €10,8bn.

(2) All creditor's losses in resolution (€11.4bn) were suffered by the shareholders and subordinated creditors of Banco Popular legal entity.

Source: Banco Popular Individual Financial Statements, Deloitte analysis

**Exhibit 1: Shortfalls to creditors' claims in the different liquidation scenarios**

(29) Allocating the total realisations to the above claims, the Valuer concluded that in all three alternative time scenarios the Affected Shareholders and Creditors would have received no recoveries. In particular:

- (i) In the 18 month liquidation period scenario, it was estimated that the liquidator would have been able to recover EUR 95.1 billion in the worst case and EUR 99.3 billion in the best case. Therefore, the equity and subordinated creditors (including the Affected Shareholders and Creditors) would have borne losses equal to 100% of the value of their rights, while the unsecured creditors would also have borne losses between EUR 8 billion (representing 33% of the value of their rights) and EUR 14 billion (representing 54% of the value of their rights) for the best and worst case respectively.
- (ii) In the 3-year liquidation period scenario, it was estimated that the liquidator would have been able to recover EUR 97.6 billion in the worst case and EUR 101.5 billion in the best case. Therefore, the equity and subordinated creditors (including the Affected Shareholders and Creditors) would have borne losses

equal to 100% of the value of their rights, while the unsecured creditors would also have borne losses between EUR 5.8 billion (representing 24% of the value of their rights) and EUR 11.5 billion (representing 44% of the value of their rights) for the best and worst case respectively.

- (iii) In the 7-year liquidation period scenario, it was estimated that the liquidator would have been able to recover EUR 100.5 billion in the worst case and EUR 104.1 billion in the best case. Therefore, the equity and subordinated creditors (including the Affected Shareholders and Creditors) would have borne losses equal to 100% of the value of their rights, while the unsecured creditors would also have borne losses between EUR 3.3 billion (representing 13% of the value of their rights) and EUR 8.5 billion (representing 33% of the value of their rights) for the best and worst case respectively.

### **3.3.2. Actual treatment of Affected Shareholders and Creditors**

- (30) As also stated in the Valuation 3 Report, the above resolution action taken in respect of the Institution resulted in the Affected Shareholders and Creditors, i.e. the holders of the Existing Shares, of the Additional Tier 1 instruments and the Tier 2 instruments, listed in recital (4), bearing losses equal to the entire value of the capital instruments held by them.
- (31) Neither other creditors of the Institution nor the DGS have suffered losses as a result of the resolution action in respect of the Institution.

### **3.3.3. Assessment of difference of treatment**

- (32) The Valuer then compared the treatment that the Affected Shareholders and Creditors would have received in the best and worst cases for all the three time scenarios (see recital (29) above) with the actual treatment that Affected Shareholders and Creditors received in the resolution of the institution (see recital (30)). Table 3 below compares the implied losses to Affected Shareholders and Creditors in case of normal insolvency proceedings to their treatment in resolution:

**Allocation of estimated write-downs for Banco Popular**  
(€m)

Creditor Hierarchy	18M Scenario Write-Down			3Y Scenario Write-Down			7Y Scenario Write-Down		
	Liquidation Best case	Liquidation Worst case	Real Case (Resolution)	Liquidation Best case	Liquidation Worst case	Real Case (Resolution)	Liquidation Best case	Liquidation Worst case	Real Case (Resolution)
1. Covered creditor	-	-	-	-	-	-	-	-	-
o/w ECB	-	-	-	-	-	-	-	-	-
2. Credits against the estate	-	-	-	-	-	-	-	-	-
3. General privileged creditors	-	-	-	-	-	-	-	-	-
3.1. Taxes	-	-	-	-	-	-	-	-	-
3.2. DGS	-	-	-	-	-	-	-	-	-
3.3. Retail Non-covered deposits	-	-	-	-	-	-	-	-	-
4. Unsecured creditors	8,045	13,969	-	5,837	11,455	-	3,269	8,517	-
o/w Legal contingencies	591	1,854	-	429	1,520	-	240	1,131	-
5. Subordinated creditors	10,777	10,777	2,041	10,777	10,777	2,041	10,777	10,777	2,041
5.1. Subordinated debt	2,041	2,041	2,041	2,041	2,041	2,041	2,041	2,041	2,041
5.2. Interest claims	123	123	-	123	123	-	123	123	-
5.3. Fines & Sanctions	1	1	-	1	1	-	1	1	-
5.4 Intra-group debt	8,613	8,613	-	8,613	8,613	-	8,613	8,613	-
6. Equity	9,398	9,398	9,398	9,398	9,398	9,398	9,398	9,398	9,398
<b>Total Write-Down</b>	<b>28,220</b>	<b>34,144</b>	<b>11,439</b>	<b>26,012</b>	<b>31,630</b>	<b>11,439</b>	<b>23,444</b>	<b>28,692</b>	<b>11,439</b>

Source: Deloitte analysis

Table 3: Allocation of estimated write-downs for Banco Popular

- (33) In light of the above, the Valuer concluded that Affected Shareholders and Creditors would not have received better treatment if the Institution had entered into normal insolvency proceedings compared to the treatment received in resolution.

### 3.4. Conclusions

- (34) It follows from the Valuation 3 Report that there is no difference between the actual treatment of the Affected Shareholders and Creditors and the treatment that they would have received had the Institution been subject to normal insolvency proceedings at the Resolution Date. In view of the above, **the SRB decides on a preliminary basis that it is not required to pay compensation to the Affected Shareholders and Creditors pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014.**

### 4. Invitation to the Affected Shareholders and Creditors to exercise their right to be heard

- (35) In order for the SRB to be able to take its final decision on whether compensation needs to be granted to the Affected Shareholders and Creditors pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014, the SRB hereby invites the Affected Shareholders and Creditors to express interest in exercising their right to be heard pursuant to Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, by following the procedure described in this Section.

- (36) In view of the large number of Affected Shareholders and Creditors and in order to complete the consultation procedure in an efficient way, the consultation process consists of two phases:
- (i) A first phase, during which Affected Shareholders and Creditors will be invited to express their interest in exercising their right to be heard and during which the SRB will verify whether each party having expressed its interest qualifies as an Affected Shareholder or Creditor; and
  - (ii) A second phase, during which the Affected Shareholders and Creditors who expressed their interest in exercising their right to be heard in the first phase and whose status has been verified by the SRB, will be able to submit their comments.
- (37) In particular, all Affected Shareholders and Creditors wishing to exercise their right to be heard regarding the SRB's preliminary decision and the underlying reasoning, are hereby invited to express by 14 September 2018 (12:00 noon, Brussels time) their interest in exercising the right to be heard. The interested Affected Shareholders and Creditors may express their interest solely by using a dedicated on-line registration form accessible through the SRB's website: <https://srb.europa.eu/en/content/banco-popular-right-be-heard>. Any expressions of interest submitted through other means or after the expiry of the above deadline will not be taken into account.
- (38) When registering, the interested Affected Shareholders and Creditors shall provide the SRB with the following supporting documentation which is necessary to prove their qualification as an Affected Shareholder or Creditor, i.e. that at the Resolution Date they owned one or more of the capital instruments affected in the context of the resolution of the Institution and listed in recital (4) of this Notice:
- (i) a proof of identity of the owner of the above capital instruments, which may be a copy of a valid national identity card, passport, or EU driving license as regards natural persons, or a copy of articles of association or other similar documents as regards legal persons or other organisations; and
  - (ii) a proof of ownership on 6 June 2017 of one of the capital instruments affected in the context of the resolution of the Institution and listed in recital (4) of this Notice: The proof of ownership should clearly state the name of the owner of the above instruments and demonstrate that the interested party was the owner of the above instruments on 6 June 2017.
- (39) The interested Affected Shareholders and Creditors are allowed to act through a representative who can register on their behalf. In such case, the representative shall provide the supporting documentation referenced above under recital (38) with regard to the represented Affected Shareholder or Creditor, and upon the SRB's request, a copy of the document proving that the representative is duly authorized to act on behalf of the Affected Shareholder or Creditor whom the representative purports to represent. If, upon the SRB's request, the representative fails to submit such document, the SRB reserves the right to reject the application of the representative.
- (40) The SRB will assess whether a party expressing, directly or through a representative, its interest in exercising its right to be heard by 14 September 2018 (12:00 noon, Brussels

time) qualifies as an Affected Shareholder or Creditor and therefore is eligible to submit comments during the second phase. In case the documents supporting an application are not considered sufficient to prove the party's qualification as an Affected Shareholder or Creditor, the SRB could request the relevant party to provide additional documents within five working days of the date of receipt of the SRB's request. If the party does not submit any further documents or the documents submitted are not considered sufficient to prove the party's qualification as an Affected Shareholder or Creditor, the SRB reserves the right to reject the relevant application.

- (41) At the end of this phase, the SRB will inform each party who expresses its interest during the first phase as to whether, on the basis of the submitted documents, it is considered to be eligible to exercise their right to be heard and, thus, has the right to submit its comments during the second phase.
- (42) Following review of the comments submitted during the second phase, the SRB will adopt its decision on whether compensation needs to be granted to Affected Shareholders and Creditors on the basis of Article 76(1)(e) of Regulation (EU) No 806/2014.
- (43) Any personal data collected during this procedure will be treated in accordance with Article 89 of Regulation (EU) No 806/2014 and Regulation (EC) No 45/2001.<sup>14</sup>

*Done at Brussels, on 03 August 2018*

*For the Board*

*Elke König  
Chair*

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<sup>14</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 28 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p.1