



20 July 2018

Case 05/18

FINAL DECISION

[]

Appellant,

v

the Single Resolution Board

Christopher Pleister, Chair
Kaarlo Jännäri, Rapporteur
Luis Silva Morais, Vice-Chair
Helen Louri-Dendrinou
Marco Lamandini

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FINAL DECISION

Case 5/2018,

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 1093/2010¹ (the “SRMR”),

[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), Kaarlo Jännäri, (Rapporteur), Luis Silva Morais (Vice-Chair), Helen Louri-Dendrinou, Marco Lamandini,

makes the following final decision:

Background of facts

1. This appeal relates to the SRB’s contribution notice dated 9 March 2018 (hereinafter referred to as “Contribution Notice”), by which the Board requested the Appellant to pay EUR 1.180.665,18 as contribution to the SRB administrative expenses (“Administrative Contributions”) due by the Appellant for the financial years of 2015 to 2018.
2. The SRB started to calculate Administrative Contributions as of 4 November 2014 (however, November and December 2014 were considered in the request for payment as part of the financial year 2015). During the provisional period from 2015 to 2017, the payment of Administrative Contributions was regulated by Commission Delegated Regulation (EU) No 1310/2014 of 8 October 2014 on the provisional system of instalments on contributions to cover the administrative expenditures of the Single Resolution Board² (hereinafter referred to as “Delegated Regulation 1310/2014”). Pursuant to Article 4(2) of Delegated Regulation 1310/2014, only entities qualifying as “significant entities” under the same Delegated Regulation 1310/2014 were requested to advance instalments of Administrative Contributions during the provisional period. Pursuant to Article 3(d) of Delegated Regulation 1310/2014, “*‘significant entities’ means the entities that have been notified by the [European Central Bank (“ECB”)] at the highest level of consolidation within the participating Member States, of the ECB’s decision to consider them significant within the meaning of Article 6(4) of Regulation*

¹ OJ L 225, 30.7.2014, p.1.

² OJ L 354, 11.12.2014, p. 1.

(EU) No 1024/2013 and in accordance with Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) and which are mentioned in the list published on the ECB's website on 4 September 2014, but excluding those significant entities which are subsidiaries of groups already taken into account [...]”. Accordingly, under the provisional system, instalments on Administrative Contributions were invoiced and paid by the Appellant’s controlling entity, [].

3. In September 2017, a group restructuring occurred within the [], whilst remaining in the same group, ceased being the Appellant’s controlling entity and the Appellant is now directly owned by []. With effect as of 1 September 2017, [] also ceased being a financial holding company within the meaning of Article 4(1)(Nr.20) of the Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms³, because it ceased to have a credit institution among its subsidiaries.
4. Delegated Regulation 1310/2014 was repealed by the Commission Delegated Regulation 2361/2017 of 14 September 2017, which put forward the final system of contributions to the administrative expenditures of the Single Resolution Board⁴ (hereinafter referred to as “Delegated Regulation 2017/2361”), which came into force on 8 January 2018. According to this Delegated Regulation, in the 2018 contribution cycle the SRB was required to calculate the Administrative Contributions for 2018 and for the years 2015 to 2017 in accordance with the final methodology provided by the new regulation. With respect to entities that paid instalments during the provisional period, pursuant to Article 10(4) 2361/2017, the SRB was requested to calculate the difference between the instalments paid under the provisional system regulated by Delegated Regulation 1310/2014 and the actual contributions due under the final system regulated by Delegated Regulation 2361/2017, and such difference was to be settled in the calculation of the annual contributions due for the financial year which followed the end of the provisional period, and namely 2018.
5. To the effect of the above calculations the Board used the data collected by the ECB under Regulation No. 1163/2014 of 22 October 2014 on supervisory fees⁵ (“ECB Regulation 1163/2014”), notified by the ECB to the SRB in January 2018.
6. With the Contribution Notice, the Appellant was requested to pay Administrative Contributions for the financial year 2018 of EUR 732.725,12, as well as Administrative Contributions of EUR 82.213,05 for 2015, EUR 410.567,61 for 2016 and EUR 659.324,26 for 2017, of which EUR 704.165,26 had been already paid by [] in the provisional period. The amount to be settled by the Appellant for the provisional period was therefore calculated in EUR 447.940,06.

³ Of the European Parliament and of the Council of 26 June 2013; OJ L 176, 27.6.2013, p. 1.

⁴ OJ L 337, 19.12.2017, p. 6.

⁵ ECB/2014/41; OJ L 311, 31.10.2014, p. 23.

7. The Appellant's notice of appeal was submitted to the Appeal Panel on 17 April 2018 and was submitted within the time limit of six weeks from the Contribution Notice in accordance with Article 85(3) SRMR.
8. The Chair of the Appeal Panel appointed as rapporteur the member Kaarlo Jännäri. Upon request by the Appeal Panel, the Appellant, on 24 April 2018, filed a chart comparing the supervised group [] with the supervised group []. On 14 May 2018, the SRB submitted its response to the appeal. There were no further submissions by the Parties.
9. On 6 June 2018 the Appeal Panel asked the Parties to confirm by 8 June 2018 whether, to the effect of Article 85(7) SRMR and Article 18 of the Appeal Panel's Rules of Procedure ("RoP"), they agree that there was no need for an oral hearing. The Parties saw no need for an oral hearing.
10. On 26 June 2018, after having verified submissions during and after its meeting on 11 June 2018, the Appeal Panel informed the Parties that it considered the appeal lodged for the purposes of Article 85(4) SRMR and 20 RoP with effect as of the same day.

Main arguments of the Parties

The main arguments of the Parties are briefly summarized below, to the extent that they are necessary for the determination of the merits.

Appellant

11. The Appellant claims that the change within its group structure triggered a change in the addressee of the obligation to pay Administrative Contributions pursuant to Article 7(1) of Delegated Regulation 2361/2017 and Article 2 SRMR. In particular, the Appellant argues that Administrative Contributions are due by the Appellant only as of 1 September 2017 whereas all prior Administrative Contributions, including the difference due after the payment of the provisional instalments for the period from November 2015 to September 2017 are due by []. Accordingly, the Appellant, having in the meantime settled the payments requested with the Contributions Notice, requests the reimbursement of the payment made with respect to the Administrative Contributions for the financial years 2015, 2016 and 2017.
12. Further, the Appellant claims that, with regard to the Administrative Contributions payable as of 1 September 2017, their annual calculation for the year 2018, being based on data reflecting the Appellant's group situation as at 31 December 2016, is "*disproportionate and not appropriate*", and the calculation on the basis of the relevant data as of September 2017 would be "*significantly lower*". The Appellant concedes that data as of 31 December 2017 are not yet confirmed by the auditor "as ECB will require these at the beginning of July 2018 earliest", but are nonetheless available. Therefore, the Appellant "asks the Appeal Panel to recalculate the individual annual Administrative contributions due for 2018 on the basis of the data reflecting the Appellant's situation as of September 2017 only".

Board

13. The Board objects to both requests of the Appellant.
14. As to the first claim, the Board argues that, while under the provisional system instalments on Administrative Contributions were collected only from entities at the highest level of consolidation identified according to a list published by the ECB on 4 September 2014, under the final system the annual Administrative Contributions due by the group must be paid by a single contribution debtor identified in accordance with Article 2(3) of Delegated Regulation 2361/2017, that in turn refers to the entity which is the ‘fee debtor for the group’ under Article 4 of Regulation 1163/2014 (the entity paying the supervisory fees to the ECB), and the Appellant is such a contributions collector.
15. As to the second claim, the Board argues that pursuant to Article 5(1) of Delegated Regulation 2361/2017, the SRB must rely on the data transmitted by the ECB.

Findings of the Appeal Panel

16. Pursuant to Article 59(1) SRMR, Administrative Contributions shall cover the annual estimated administrative expenditure of the SRB. Pursuant to Article 65 SRMR, entities falling within the scope of the SRMR shall pay such Administrative Contributions. To this effect, the Board shall determine and raise the contributions in a decision addressed to the entity concerned (Article 65(3) SRMR).
17. Pursuant to Article 2(a), the SRMR applies to all “*credit institutions established in a participating Member State*” within the meaning of Article 2(3) of Council Regulation (EU) 1024/2013⁶ (“SSM-Regulation”). The Appellant is a credit institution as defined in Article 4(1) of Regulation (EU) No 575/2013⁷.
18. During the provisional period, beginning on 19 August 2014 and ending on 31 December 2017 (see to this effect Article 2(4) of Delegated Regulation /2361/2017⁸), a provisional arrangement was established to allow the SRB during such period to collect instalments for Administrative Contributions. Under the provisional system only ‘significant entities’ within the meaning of Articles 4(2) and 3(b) of Delegated Regulation 1310/2014 had to pay instalments in advance on Administrative Contributions. [] was such a significant entity (and was comprised in the list of significant supervised entities published by ECB on 4 September 2014⁹).

⁶ Of the Council of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions; OJ L 287, 29.10.2013, p. 63.

⁷ Of the European Parliament and off the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; OJ L 176, 27.6.2013, p. 1.

⁸ With regard to the extension of the provisional period beyond the initially intended timeframe until the end of the year 2015 see Appeal Panel, Case 1/16, paragraph 12.

⁹ <https://www.ecb.europa.eu/pub/pdf/other/ssm-listofsupervisedentities1409en.pdf>.

Administrative Contributions for the Provisional Period

19. The Appellant claims that it cannot be held liable for any instalments on Administrative Contributions due for the provisional period. In the Appeal Panel's view, the claim is without merit.
20. Pursuant to Articles 8(1) and 5(4) of Delegated Regulation 2361/2017 the SRB is required to raise Administrative Contributions from the contributions debtors, which, in case of groups, shall pay the contributions for the entire group. According to Article 2(3) of Delegate Regulation 2361/2017 'contributor debtor' is the entity that qualifies as 'fee debtor' for the group under Article 4 of Regulation (EU) No 1163/2014, i.e. the entity that must pay the supervisory fees to the SSM. The Appellant is such an entity. This is also confirmed by the fact that, in accordance with Article 11 of Delegated Regulation 2361/2017, the Appellant was indicated by the ECB to the SRB to this effect since no different solution arises from the aforementioned relevant provisions. In the Appeal Panel's view, this final system for the identification of the entity which must pay the final Administrative Contributions, applies also to the final payments to be made to settle the difference still due for Administrative Contributions in the provisional period.
21. The Board was therefore correct, when calculating the Administrative Contributions due by the Appellant, in requiring the Appellant to pay, in 2018, the difference between the provisional instalments on the Administrative Contributions paid under the provisional system by [] and the annual amounts calculated under the final system.

Administrative Contributions for 2018

22. The Appellant further objects to the calculation of the annual Administrative Contributions due for 2018. Also this claim is, in the Appeal Panel's view, without merit. Pursuant to Article 5(1) of Delegated Regulation 2361/2017, the SRB must calculate the individual annual Administrative Contributions for each financial year on the basis of the data received in accordance with Article 6 of the same Delegated Regulation. Article 6(6) specifically provides that "*for the calculation of the individual annual contributions to be collected in a given financial year, the Board shall use the data collected by the ECB in the previous financial year in accordance with Regulation (EU) No 1163/2014*". It follows from the clear language of the Delegated Regulation that the SRB used the right data, namely these of 31 December 2016, and was compelled to do so.

On those grounds, the Appeal Panel hereby:

dismisses the appeal

Helen Louri-Dendrinou

Kaarlo Jännäri
Rapporteur

Luis Silva Morais
Vice-Chair

Marco Lamandini

Christopher Pleister
Chair