



27 January 2020

Case 8/2019

FINAL DECISION

[.],

Appellant,

v

the Single Resolution Board

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

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FINAL DECISION

In Case 8/19

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”),

[.], with address for service in [.] (hereinafter the “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), Luis Silva Morais (Vice-Chair), Helen Louri-Dendrinou and Kaarlo Jännäri,

makes the following final decision:

Background of facts

1. This appeal relates to the SRB decision of 12 November 2019 (hereinafter the “Confirmatory Decision”) rejecting the Appellant’s confirmatory application, by which the Appellant requested the SRB to reconsider its position in relation to its initial request and the SRB’s response thereto, 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 documents² (hereinafter “Regulation 1049/2001”), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents³ (hereinafter “Public Access Decision”).
2. By the initial request of 17 August 2019 the Appellant requested access to the following documents: (a) the Critical Functions Report of Banco Popular in 2017; (b) documents demonstrating that the bankruptcy of Banco Popular would have had a negative impact on financial stability in Spain or other EU Member States; (c) the last recovery plan delivered by Banco Popular and the evaluation made by the SRB/ECB on that plan; (d) documents supporting the non-intervention of the Latvian Bank PNB Banka; (e) additional documentation non published as Annex 2 to the agreement signed with the European Commission by Valdis Dombrovskis of Latvian origin; and (f) the times and dates of the

¹ OJ L 225, 30.7.2014, p.1.

² OJ L 145, 31.5.2001, p. 43

³ SRB/ES/2017/01.

meeting held with Valdis Dombrovskis and if in any of the minutes or meetings has discussed the case of Latvian Bank PNB Banka with this leader. With the initial response the Board either granted or refused access to the requested documents (fully or partially), providing the Appellant a detailed justification for documents or parts thereof for which access was not granted. The Appellant submitted a confirmatory application requesting the SRB to reconsider its position. The SRB rejected the confirmatory application with the Confirmatory Decision which is the subject of the appeal in the present case.

3. On 12 November 2019 the Appellant sent an email to the Appeal Panel contesting that his request for access to documents was denied by the SRB, attaching the respective Confirmatory Decision.
4. On the 20 November 2019 the Appeal Panel, having determined that this is a case where admissibility must be examined before any consideration, if any, of the merit, according to Article 5(4)(a) and 9(2) of the Rules of Procedure, asked the parties to submit within two weeks their written submissions on the admissibility of the appeal.
5. Both parties made their written submissions.
6. On 3 January 2020 the Appeal Panel, having considered the submissions of both Parties notified the Parties that the Chair considered that the appeal had been lodged for the purposes of Article 85(4) of Regulation 806/2014 and 20 of the Rules of Procedure as to the determination on the admissibility of the appeal.

Main arguments of the parties

7. The main arguments of the parties are briefly summarised below. It is specified that the Appeal Panel considered every argument raised by the Parties, irrespective of the fact that a specific mention to each of them is not expressly reflected in this decision.

Appellant

8. The Appellant challenges the Confirmatory Decision claiming that he has the right to access the requested documents and, at the same time, puts forward, with the appeal, a request for access to the documents exchanged between the SRB and its lawyers (Linklaters).

Board

9. The Board argues that the appeal is inadmissible because the Appellant does not ask in his appeal a review of the Confirmatory Decision and the remittal of the same to the Board nor states any grounds against the part of the Appealed Decision.
10. The Board further argues that the Appellant's request to access the documents exchanged between the SRB and Linklaters is inadmissible because such documents were not requested by the Appellant with his initial and confirmatory requests.

Findings of the Appeal Panel

11. [...], the Appellant, with the appeal and his subsequent submissions, completely failed to state specific grounds of appeal against the Confirmatory Decision and to put forward any argument why the Board has, in the Appellant's view, wrongfully denied access to the requested documents with the Confirmatory Decision.
12. According to Article 5 of the Rules of Procedure, which expressly requires that "The notice of appeal shall: a) state why it is admissible under Article 85(3) of Regulation 806/2014; b) state the grounds on which it is based", the appeal is therefore manifestly inadmissible.
13. In turn, the documents exchanged between the SRB and Linklaters are not one of the subject matters of the Confirmatory Decision and therefore the appeal is also manifestly inadmissible in this respect.

On those grounds, the Appeal Panel hereby

Dismisses as inadmissible the appeal.

Helen Louri-Dendrinou

Kaarlo Jännäri

Luis Silva Morais
Vice-Chair

Marco Lamandini
Rapporteur

Christopher Pleister
Chair

For the Secretariat of the Appeal Panel :