18 December 2025

Case 1/2025

FINAL DECISION

[.], Appellant,

v

the Single Resolution Board

Christopher Pleister, Chair and Co-Rapporteur
Helen Louri-Dendrinou, Vice-Chair
Marco Lamandini, Co-Rapporteur
Kaarlo Jännäri
David Ramos Muñoz

TABLE OF CONTENTS

FINAL DECISION

In Case 1/2025,

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[1] (the "SRMR"),

[.], a legal entity with headquarters [.] (hereinafter **"[.]"** or 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 and Co-Rapporteur), Helen Louri-Dendrinou (Vice-Chair), Marco Lamandini (Co-Rapporteur), Kaarlo Jännäri and David Ramos Muñoz,

makes the following final decision:

Background of facts

1. This appeal relates to the SRB decision of [.] [.] (hereinafter the "**Contested Decision**").

2. With the Contested Decision the Board concluded that the Appellant is to be considered a resolution entity because its winding up under national insolvency proceedings at a time of broader financial instability of system wide events would likely result in significant adverse effects on the financial stability of [.] in the sense of Article 14(2)(b) SRMR. This was similar to previous Board decisions that [.] appealed before the Appeal Panel in cases 3/2022 and 3/2024. With the Contested Decision, however, unlike in previous Board decisions, in this case the Board also considered the criticality of the function of provision of transactional accounts *([.])* by the Appellant within the meaning of Article 2(1)(35) BRRD, having regard to the impact of its discontinuation in [.] and the substitutability of that function, and concluded that the liquidation of the Appellant under normal insolvency proceedings would not ensure the continuation of said critical function and resolution action would be necessary and proportionate to preserve it.

[1] OJ L 225, 30.7.2014, p.1.

3. Consistently, the Contested Decision, in the determination of the MREL, sets out in Section I a minimum requirement of own funds and eligible liabilities (hereinafter the "**MREL**") for the Appellant on an individual basis at [.] of the total risk exposure amount (hereinafter the "**TREA**") and [.] of the leverage ratio exposure (hereinafter the "**LRE**") and grants to the Appellant a transitional period until [.] to meet such requirements.

4. The Appellant appealed the Contested Decision with notice of appeal of 29 July 2025.

5. On 1 August 2025, the Secretariat of the Appeal Panel notified to the Board the notice of appeal informing that the response should be served on to the Appellant and filed with the Secretariat of the Appeal Panel within six weeks by 15 September 2025.

6. On 7 August 2025, upon reasoned request of the Board, the Appeal Panel extended the deadline for the Board to submit its response by one additional week to 22 September 2025.

7. On 11 August 2025, the Board was informed that on 5 August 2025, the Appellant had requested a stay of the proceedings. The Board was asked to file its observations by 13 August 2025. The Board opposed the requested suspension.

8. On 14 August 2025, the parties were informed that the Appeal Panel, also taking into consideration the Board's observations, had not granted the Appellant's request.

9. On 19 August 2025, the Secretariat of the Appeal Panel notified to the parties the composition of the Appeal Panel for the case and informed that the Chair had appointed himself and professor Marco Lamandini as co-rapporteurs of the case.

10. On 22 September 2025, the Board submitted its response in English. The response was notified to the Appellant on 29 September 2025, specifying that the Appellant was granted three weeks for a reply, running however from the date the Board would submit the [.] version of its response, which was expected by 2 October 2025.

11. On 2 October 2025, the Board submitted the [.] version of its response, that was served by the Secretariat of the Appeal Panel to the Appellant on 3 October 2025, specifying to the Appellant that the deadline for the Appellant's reply, if any, was 24 October 2025.

12. On 6 October 2025, the Appellant submitted a reasoned request for an extension of the deadline to submit its reply by two weeks. The required extension, that was communicated to the Board and raised no objections, was granted by the Appeal Panel on 13 October 2025 until 7 November 2025.

13. On 7 November 2025, the Appellant submitted its reply to the Board's response, in [.] and with an English translation. On the same day, the Secretariat of the Appeal Panel served to the Board both documents, and invited the Board to submit its rejoinder, if any, within three weeks, by 28 November 2025.

14. On 12 November 2025, the Appeal Panel informed the parties that, due to the fact that the

mandate of the current members of the Appeal Panel would expire on 31 December 2025, and the efficient management of the case would require that the decision in the present case be adopted before that date, the Appeal Panel invited the parties to communicate by 14 November 2025 if they wished to have a hearing for the oral discussion of the case. The Appeal Panel also informed that the hearing, if any, would take place in Brussels on 15 December 2025, subject to the availability of the interpretation services of the European Commission.

15. On 14 November 2025, the Appellant confirmed its willingness to discuss the case at a hearing.

16. On 27 November 2025, the Secretariat of the Appeal Panel informed the parties that the interpretation services of the European Commission had confirmed their availability for the hearing scheduled for 15 December 2025 and that, therefore, the hearing would take place in Brussels at the SRB premises on that date.

17. On 11 November 2025, the Board waived its right to submit a rejoinder to the Appellant's reply.

18. On 15 December 2024, the hearing was held in Brussels. Both parties appeared and presented oral arguments, where they reiterated their respective positions, adding further considerations of fact and law. The parties also answered questions from the Appeal Panel for the clarification of facts relevant for the just determination of the appeal. Prof. Marco Lamandini, while fully engaged in the preparation as Co-rapporteur of the case, including the timely preparation of the hearing, was excused from attending the hearing […..]. Under Article 18(10) of the Appeal Panel Rules of Procedure the quorum for the hearing was met. The Chair and Co-Rapporteur conducted the hearing, and Prof. Ramos Muñoz took the lead during the stage of the questions, having previously coordinated with the two Co-Rapporteurs before the hearing.

19. At the end of the hearing, the Chair informed the parties that he considered that the evidence was now complete and thus that the appeal was considered lodged as of 15 December 2025 for the purposes of Article 85(4) of Regulation 806/2014 and Article 20 of the Rules of Procedure.

Main arguments of the parties

20. The main arguments of the parties are briefly summarised below and are considered in greater detail in the findings of the Appeal Panel. It is specified that the Appeal Panel considered all arguments raised by the parties, irrespective of the fact that a specific mention to each of them is not expressly reflected in this decision.

Appellant

21. The Appellant argues that the Contested Decision errs in law and should therefore be remitted to the Board. The Appellant contests its designation as a resolution entity on substantive and procedural grounds and, consequently, the MREL decisions adopted by the SRB determining the MREL for the Appellant. This appeal is the third consecutive challenge by the Appellant of its MREL target before the Appeal Panel. The first challenge resulted in the remittal of the MREL decision to the Board on procedural grounds in case 3/2022. The second challenge resulted in the dismissal of the appeal and, therefore, the confirmation of the (contested) MREL decision in case 3/2024. In the present appeal, the Appellant relies on three grounds (insufficient implementation of the requirements of the Appeal Panel in case 3/2022; no consideration of the requirements stipulated by the Appeal Panel in case 3/2024; substantive errors in the classification as a resolution entity), with the third ground sub-divided into different limbs.

22. With the first ground, the Appellant argues that the Contested Decision insufficiently implemented the requirements set by the Appeal Panel with its decision in case 3/2022.

23. With the second ground, the Appellant argues that the Contested Decision disregarded the requirements set by the Appeal Panel with its decision in case 3/2024.

24. With the third ground, the Appellant argues that the Board (i) has erred in its assessments in the qualification of the Appellant as a resolution entity and (ii) breached its duty to state reasons. With a first limb, the Appellant argues that the Board made an error of assessment, and did not provide appropriate reasons, in identifying the provision of transactional accounts as a critical function. The Appellant disagrees in particular with the impact and substitutability analyses performed by the SRB in relation to the Appellant's provision of transactional accounts. With the second limb, the Appellant argues that the qualification of the Appellant as a resolution entity based on financial stability grounds is mistaken (and the Appellant reiterates here claims also raised in the past in cases 3/2022 and 3/2024) including the argument that the SRB should have taken into account the LSIs stress test carried out by [.] to adjust the EBA/ECB stress tests which underlie the contagion assessment carried out by the SRB.

25. The Appellant further complemented its arguments in support of the appeal with its reply to the Board's response, challenging the Board's views, and clarifying and stressing its position on the relevance of the [.] version of the decision, the role of the Appeal Panel's previous decisions and standard and scope of review, the flaws in the Board's methodology for system-wide events, and, especially, the methodology to assess the criticality of the provision of transactional accounts, and in the oral discussion of the case, where its statements focused to a large extent on the methodological flaws in the Board's criticality assessment for transactional accounts.

Board

26. The Board submits that the appeal is unfounded and should therefore be rejected.

27. As to the first and second grounds of appeal based on the lack of implementation of previous Appel Panel's decisions, the Board submits that they are ineffective, because the Contested Decision has not been adopted pursuant to Article 85(8) SRMR. The Board contends therefore that it cannot be criticised for having violated an obligation that was not applicable to the Board, when adopting the Contested Decision. The Board also argues that, in any event, the Contested Decision is in line with the findings of the Appeal Panel in cases 3/2022 and 3/2024.

28. As to the third ground of appeal, second limb, the Board contends that is has correctly qualified the Appellant as a resolution entity based on financial stability grounds. In the context of the regular 2024 resolution planning cycle (hereinafter "**RPC**"), the Board has assessed the resolvability of the Appellant and, in line with the assessments carried out in previous RPCs, the SRB has again considered that the winding up of the Appellant under normal insolvency proceedings would not meet the resolution objectives under a scenario of broader financial instability to the same extent as resolution. The Appellant criticises that assessment by resorting in full to its arguments in cases 3/2022 and 3/2024. The Board contends that the remittal in full to previous cases should be declared inadmissible under the procedural rules of the Appeal Panel. As to [.] LSIs stress test, the Board clarifies why it considered its use as not appropriate for adjusting the EBA/ECB stress tests. In any case, the Board also contends that its use would not have materially changed the outcome of the contagion analysis.

29. As to the first limb of the third ground of appeal, the Board contends that it did not make any error of assessment in identifying the provision of transactional accounts as a critical function. The Appellant disagrees with the impact and substitutability analyses performed by the SRB in relation to the Appellant's provision of transitional accounts. The Appellant is however wrong in considering the existence of any type of secondary account as a suitable substitution of transactional accounts and, therefore, a mitigant of the negative impact of their sudden disruption. Likewise, according to the Board, the uncontextualized reference to the number of existing banks or branches in [.] cannot call into question the representativeness of the SRB's sample of banks whose data have been used to estimate the on-boarding capacity for the Appellant's transactional accounts.

30. As to the clarity and sufficiency of the statement of reasons, the Board contends that it has clearly and sufficiently explained, in the decision, the reasons and elements pertinent to the designation of the Appellant as a resolution entity, consistently with previous MREL decisions for the Appellant that the Appeal Panel has examined and has considered as meeting the applicable legal standard. The SRB has also explained the new elements concerning the identified critical function, reinforcing the designation of the Appellant as a resolution entity. The Board concludes on this that the Appellant may not agree with the rationale for the Board's decision, but it has clearly understood it, taking also into account the context and exchanges that took place between the SRB and the Appellant before the adoption of the Contested Decision, as further evidenced by the detailed substantive (rather than merely procedural) challenges made by the Appellant in this appeal.

31. The Board further complemented its arguments in the oral discussion of the case.

Findings of the Appeal Panel

(a) The factual background.

32. The Appeal Panel preliminarily considers useful to briefly recall the circumstances of fact from which the present appeal originates.

33. The Appellant is [.], with assets of around [.].
It is the market leader in the [….]. Although the Appellant is one of the [.], whose […. …].

34. Given its size and significance, the Appellant is directly supervised by the European Central Bank and is under the responsibility of the SRB for all decisions relating to resolution, including the MREL decision.

35. The Appellant is [.] (hereinafter "**[.]**"), whose [.] ([.]). The [.] is governed by its "[.]". The preamble of said rules summarizes the structure and functions of the [.] as follows:

> [….].

36. On 31 May 2021, the SRB published its "Addendum to the Public Interest Assessment: SRB Approach" (hereinafter the "**Addendum 2021**") containing a revised approach to the public interest assessment in resolution planning, which took into account for the first time the fact that a bank's failure may take place not only under an idiosyncratic scenario, but also at a time of broader financial instability or system-wide events as set out in Article 8(6) fourth subparagraph SRMR. The aim of that revised approach to the public interest assessment is to strengthen, at the resolution planning stage, the choice of the best resolution strategy to safeguard the resolution objectives set out in Article 14(2) SRMR.

37. The SRB implemented this revised approach to the public interest assessment (as set out in the Addendum 2021) for the first time during the 2021 RPC with the decision of [.], [.]. This decision was challenged by the Appellant in case 3/2022, leading to the Appeal Panel decision of 13 February 2023. In its decision in case 3/2022 the Appeal Panel remitted the case to the Board. A subsequent, amended decision was adopted on [.], which in turn was replaced in the following RPC by a new decision of [.], [.]. This decision was challenged by the Appellant in case 3/2024. With its decision of 30 October 2024, the Appeal Panel dismissed the appeal, conclusively noting at §§ 176 and 194 of its final decision that:

> "176. The applicable rules, the SRMR, suggest that in this case the Appeal Panel must review the plausibility of the Board's assessment. This is not because the Appeal Panel exercises a marginal review, but because the statutory scheme of the SRMR in this case requires the Board to make its assessment not by estimating the probable scenario, but by simulating, under conditions of uncertainty, scenarios that are improbable, but plausible and reasonable".
>
> "194. The Appeal Panel reiterates that it can make a full review of the assessment made by the Board, its assumptions, and technical analysis, but it cannot use a de novo evaluation to substitute

its view for the expert judgment of the Board. In light of this, the Appeal Panel finds that also on the conclusions reached on possible adverse effects on financial stability in [.] by the Contested Decision in the scenario considered by the Board is plausible and reasonable, and the Appellant has not shown any decisive factor which can support the opposite conclusion."

38. With the Contested Decision of [.], the Board concluded that the Appellant's winding up under normal insolvency proceedings would not ensure the avoidance of significant adverse effects on financial stability and that the liquidation of the Appellant under normal insolvency proceedings would not ensure the continuation of the critical function of transactional accounts, whereas the application of the preferred resolution strategy (sale of business tool according to Article 22(2)(a) SRMR) could achieve the resolution objectives to a better extent.

39. It must be pointed out that the Board, in its Contested Decision, has grounded the above finding on an assessment of the risk of contagion, as it did in its previous decisions, which led to cases 3/2022 and 3/2024. Unlike those previous decisions, however, this time the Board has based its assessment that resolution objectives would not be achieved with a winding-up under national insolvency law also on the argument that the provision of transactional accounts (*[.]*) to retail customers by the Appellant is a "critical function", whose continuity could not be ensured under an insolvency winding up. In particular, the Contested Decision states, in recital (6) that:

"the Board considers that the discontinuation of the function of provision of transactional accounts (*[.]*) by [.] would have a material impact on third parties taking into account, *inter alia*, that at 31 December 2023 [.] provided over [.] transactional accounts ([.]) to over [.] household customers, facilitating their day to day financial transactions. Further, [.] has reported that, among the number of clients, [.] are recurrent customers for [.] and call money market accounts. The loss of transactional accounts such as the [.] implies that household customers would suffer from temporary lack of access to banking payment services (i.e. the ability to make and receive payments), temporary lack of access to positive account balances with which to make payments, and the temporary and potentially even permanent loss of associated account information (e.g. payees, standing orders and direct debits, as well as payments history which can inform potential lenders' or creditors' credit decisions). As to the substitutability of the function in its market, in light of the significant number of accounts and customers serviced by [.] and the concomitant time and resources that onboarding customers and opening accounts may require, the Board has concluded that the function of provision of transactional accounts ([.]) cannot be replaced in an acceptable manner and within a reasonable timeframe without impact on financial stability. [.] is among the top banks in [.] regarding the number of recurrent household customers' [.] and substitution would take more than 7 days on a national level. The time for substitution would be even longer (more than 14 days) when considering [.]. The conclusion is strongly supported by the horizontal analysis of the 2024 [.] and SRB questionnaire [.] on transactional accounts ([.]). The Board further took into consideration that winding up under normal insolvency proceedings in [.] does not foresee specific instruments, powers or processes that would ensure continuity of critical functions provided by an entity entering into NIP. In light of the above, the Board has concluded that the function of provision of transactional accounts ([.]) by the resolution entity to retail customers is a critical function and that, should [.] be declared failing or likely to fail in accordance with Article 18 of Regulation (EU) 806/2014, liquidation under normal insolvency proceedings would not ensure the continuation of said critical function, meaning that resolution action would be necessary and proportionate to preserve it.

40. The Appeal Panel addressed already, in cases 3/2022 and 3/2024, the Board's conclusion about the risk of contagion and potential impact on financial stability of a winding up of the

Appellant under normal insolvency proceedings, and the technical analysis supporting such conclusion. In that context the Appeal Panel also considered that the Appellant provides transactional accounts to its clients, but only for purposes of the implications of the provision of said transactional accounts for the risk of contagion and potential impact on financial stability. This is the first time that the Appeal Panel examines the different finding of the Board that those transactional accounts constitute a critical function, within the meaning of Article 2(1)(35) of Directive 2014/59/EU (Bank Recovery and Resolution Directive – BRRD) that is relevant as one of the resolution objectives as set out in Article 14(2) SRMR and that liquidation under normal insolvency proceedings would not ensure the continuation of said critical function, and this justifies the need for resolution instead of a winding up under normal insolvency proceedings.

41. According to Article 14 SRMR the resolution objectives are the following (emphasis added): *(a) to ensure the continuity of critical functions; (b) to avoid significant adverse effects on financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline*; (c) to protect public funds by minimising reliance on extraordinary public financial support; (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC; (e) to protect client funds and client assets.

42. The Appeal Panel further notes, as a matter of background and in light of the arguments raised also in this appeal by the Appellant, that in the Contested Decision the Board disregarded the factual elements which could be inferred by the [.] stress tests for less significant institutions that prove a higher resilience of [.]. The Appeal Panel also recalls that in its decision of 30 October 2024 in case 3/2024, when considering the potential contagion effects of the failure of the Appellant, the Appeal Panel held that:

> "161. The Appeal Panel can understand that, as stated by the Board in its written answers to the questions raised by the Appeal Panel with procedural order no 4, in principle the Board relies on EBA/ECB stress tests because, as the Board noted, "with a single scenario, methodology and timeline [they] ensure homogeneity, consistency and, ultimately, a level playing field amongst entities in terms of shock applied to the Banking Union banks in the system wide Case 3/24 37 event scenario". The Appeal Panel is however concerned that additional available specific data are left aside. If more specific data for [.]' capital depletion in adverse (stressed) scenarios are available, as it happens to be the case of the [.] stress test of 2022, which comprise [.], their results should not be neglected. Instead, they should be taken into account in possibly adjusting the results arising from the EBA/ECB stress tests, at least in a situation where it may be reasonable to argue that there could be different conclusions on the expected capital depletion from the stress test data performed for the different [.]. This is a concern reinforced in the case at hand by the observation that, should most of the other [.] (which are not captured in the EBA/ECB stress test) suffer a capital depletion similar to the one suffered by the Appellant in the EBA/ECB stress test, the actual difference in capital depletion for all [.] with the average CET1 ratio of [.] banks included in the stress test would not be entirely negligible.
>
> 162. However, although the Appeal Panel wishes that in its future practice the Board could additionally consider in its analysis any [.], if available and pertinent, the Appeal Panel is not persuaded that this would have changed the assessment in the present case. The Appeal Panel thus considers that the failure from the Board to include in its assessment the data resulting from the [.] as an additional ("shading" or "mitigating") factor to the EBA and ECB stress tests of relevance for

is not sufficient to uphold the second ground of appeal and to conclude that the Board was mistaken in concluding that the liquidation of the Appellant may have contagion and financial stability effects which justify resolution.

(b) On the first ground, second ground and the second limb of the third ground of appeal.

43. The Appeal Panel considers that the first two grounds of appeal, and the second limb of the third ground (concerning the allegedly incorrect assumption of contagion effects for system-wide events, and the insufficiency of the statement of reasons supporting such conclusion) can be addressed together.

44. The Appeal Panel considers, in particular, that these grounds reiterate in substance the arguments already addressed by the Appeal Panel in its decisions in cases 3/2022 and, more recently in case 3/2024. Thus, whilst the arguments are admissible, and, in the special circumstances of this iterative litigation between the same parties, they do not violate Article 5(2) of the Appeal Panel Rules of Procedure, they must be dismissed for the same reasons already discussed in its decision of 30 October 2024.

45. The Appeal Panel acknowledges that the Contested Decision is a different decision from the MREL decisions discussed in cases 3/2022 and 3/2024. Therefore, the existence of prior Appeal Panel decisions does not bar the Appellant from presenting against the Contested Decision similar or identical arguments to those already raised against the MREL decisions challenged in previous RPCs.

46. However, to the extent that those arguments reiterate in substance claims that the Appeal Panel has already addressed and dismissed, the Appeal Panel – after careful consideration on whether the Appellant, in the present case, has presented new factual or legal reasons that could justify a departure of the Appeal Panel from its previous findings – finds that the Appellant in fact has not brought forward new factual evidence nor legal arguments that support a remittal of the Contested Decision under the first, the second, and the second limb of the third ground of appeal.

47. The Appeal Panel agrees with the Appellant that it is certainly unfortunate that the Contested Decision does not expressly address in its statement of reasons the [.] stress test and disregards the recommendation of the Appeal Panel as expressed in paragraphs 161 and 162 of its decision of 30 October 2024. However, in the present case the Board, in its written submissions, has explained why, in its expert judgment, the data arising from the [.] stress test for less significant institutions were not pertinent to the analysis carried out by the Board as reflected in the Contested Decision. The Board notably argued that the [.] stress test does not assume the same adverse scenarios than those used by the EBA/ECB.

48. This argument, based upon the evidence brought forward by the Appellant in the present proceedings, does not show, in the Appeal Panel's view, any factual error of assessment nor justifies a finding of insufficiency of the statement of reasons of the Contested Decision, because it clarifies why the Board considered that the [.] stress test was not pertinent, due to its different adverse scenario's assumptions.

49. The reiteration, under the first, second and first limb of the third ground of appeal of claims already addressed by the Appeal Panel in previous cases between the same parties justifies, in the Appeal Panel's view, that the reasons for the dismissal of those grounds may be more succinctly stated, making also reference where necessary to the previous Appeal Panel's decisions in cases between the same parties.

50. In this spirit, preliminarily, as to the Appellant's remark concerning the official language of the Contested Decision, the Appeal Panel refers to its findings in case 3/2022 and in joined cases 2/2023 and 3/2023 where it held that establishing the English text as the authentic version of the decision is valid and does not violate any of the appellant's procedural rights.

51. Specifically, the Appeal Panel has clarified in case 3/2022 that, in its view, although the MREL decision is in English, the Appellant is entitled in conformity with Article 81(1) SRMR and of Article 2 of Regulation No 1 of 1958 to appeal the Contested Decision in [.], where there is no evidence that the Appellant had consented to the use of the English language in the proceedings leading to the adoption of the Contested Decision. The procedural rights of the Appellant in the appeal proceedings are therefore fully safeguarded.

52. In turn, the Appeal Panel has further clarified, in joined cases 2/2023 and 3/2023, that a MREL decision drafted in English does not violate Article 81(1) SRMR and Regulation No 1 of 1958 even if the bank concerned did not consent to the use of the English language in its relationship with the SRB.

53. The Appeal Panel notes that, according to Article 4(5) of the Cooperation Framework adopted by the SRB under Article 81(4) SRMR "*legal acts of the SRB addressed to the national resolution authorities for their implementation under national law shall be adopted in English, which will constitute the legally binding version of such a legal act of the SRB*".

54. It is not disputed between the parties that the Contested Decision was notified to the Appellant with a [.] translation and that the RTBH procedure on the draft Contested Decision was conducted in [.].

55. In this context, in the Appeal Panel's view, the Board has adopted appropriate linguistic measures to ensure compliance with Regulation 1/58 and to ensure that the Appellant's procedural rights are fully respected also during the proceeding leading to the adoption of the Contested Decision, in a way which is consistent with the objective of not making devoid of purpose the election of English as language of the SRB and of the national resolution authorities participating to the SRM .

56. The Appellant emphasises that, in the present case, there may have been crucial mistakes in the translation into [.], notably in respect to the reference to the "disruption" of the transactional accounts' function, that was translated as "failure" ('[.]', where the [.] for disruption would have been "[.]").

57. Despite this inconvenience, however, the Appeal Panel is persuaded that, as already clarified in its previous decision in joined cases 2/2023 and 3/2023, the Appellant was duly informed

of that the official language of the decision is English, and the Appellant was also fairly and timely warned that, should there be relevant parts or sentences of the Contested Decision which may result critical, ambiguous or unclear in the [.] text, a careful consideration of the English text is also necessary to double-check the accuracy of the translation, and to dispel any doubts. If the Appellant considered critical the expression "[.]" in [.], it could diligently double-check the English text to verify to what extent the English word could equally support its arguments based on that [.] word.

58. With respect to the first and second ground of appeal, whilst the Appeal Panel appreciates that both parties acknowledge that the SRB was not directly bound by the decisions in cases 3/2022 and 3/2024 when adopting the Contested Decision in the new RPC, the parties differ on whether those precedents may have a *de facto* binding effect. The Appeal Panel considers that any MREL decision adopted in a different RPC is different and that therefore findings of the Appeal Panel made in respect of previous MREL decisions concerning the same Appellant may indicate the possible or likely outcome of a new challenge for the same reasons, if the factual context is the same or substantially equivalent, and yet there is no *de facto* binding effect.

59. For that reason, the first ground of appeal, which claims that the SRB insufficiently implemented with the Contested Decision the requirements set by the Appeal Panel in Case 3/2022 and the second ground of appeal, which claims that the SRB disregarded the expectations set by the Appeal Panel in case 3/2024 must be dismissed. The Appeal Panel agrees on this with the Board that those two grounds of appeal are ineffective, since they criticise the Board for breaching a legal obligation which, in fact, was not applicable to the Board when adopting the Contested Decision. The Appeal Panel further notes that in case 3/2024 the Board's MREL decision was confirmed.

60. With the first limb of the third ground of appeal, the Appellant claims, in essence, that the Contested Decision is based on substantive errors, and its statement of reasons is insufficient, concerning the Appellant's classification as a resolution entity due to the contagion effects held to exist if the Appellant were to be wound up under normal insolvency proceedings in case of system-wide events.

61. Before addressing those allegations, the Appeal Panel recalls that the resolvability assessment required by Articles 8(9)(e) and (11)(c) SRMR in the context of resolution planning involves the assessment of complex technical elements. The Appeal Panel has held in its decision of 13 February 2023 in case 3/2022, at paragraph 60, that "when the SRB prepares and implements a resolution strategy, including its assessment whether resolution is in the public interest and is preferable to liquidation under domestic insolvency law, it enjoys a margin of technical discretion. The Board is indeed required to make choices of technical nature, which are necessarily based on forecasts and complex assessments. This means that such margin of technical discretion needs to be respected". Likewise, in its decision of 30 October 2024 in case 3/2024 the Appeal Panel has specified, that "the Appeal Panel's review is based on an adversarial procedure", "cannot lead to *a de novo* evaluation" and "needs to respect the margin of appreciation of the Board conferred by the applicable rules", limiting the Appeal Panel's

review to "the plausibility of the Board's assessment".

62. The Appeal Panel considers that, for the same reasons already held in its decision of 30 October 2024, also in the present case, the Appellant has not shown, by producing any compelling evidence or by other means, that the assessment of the Board was erroneous or the reasons put forward by the Board were insufficient to justify a risk of contagion which may have significant adverse effect on financial stability in [.].

63. The Board's assessment is reflected in recitals (7) to (19) of the Contested Decision, as well as in point no. 1 of section II, RTBH assessment memorandum, of the Contested Decision.

64. Since in support of this limb of the ground of appeal, the Appellant merely states that it "*uphold*[s] *the arguments put forward in case 3/2022 and case 3/2024 against the assumption of contagion effects*", the Appeal Panel recalls its findings in previous cases, by stressing the following.

65. The substance of the Appellant's claim is that resolution would not be necessary for the Appellant and the Contested Decision fails (i) on one hand, to demonstrate the unsuitability of [.] insolvency law, in particular by means of prepacked insolvency plans largely known in the practice under [.] insolvency law, to achieve the objectives pursued with the resolution strategy to the same extent and (ii) on the other hand, to recognise the [.] to which the Appellant is [.] and to credibly demonstrate that the Appellant's failure under normal insolvency proceedings would trigger contagion effects on other [.] in a system-wide event which would likely result in significant adverse effects on the financial stability of [.] in the sense of Article 14(2)(b) SRMR.

66. The Appeal Panel preliminarily notes that the Board has identified the Appellant as a resolution entity considering its resolution as in the public interest and that the resolution strategy envisaged by the Board for the Appellant in the resolution plan is the sale of business tool. The Appeal Panel recalls that Article 18(5) SRMR provides that:

> For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to one or more of the resolution objectives referred to in Article 14 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

67. As already noted above, according to Article 14 SRMR the resolution objectives are the following:

> (a) to ensure the continuity of critical functions; (b) to avoid significant adverse effects on financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline; (c) to protect public funds by minimising reliance on extraordinary public financial support; (d) to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC; (e) to protect client funds and client assets.

68. In the present case the parties agree that one of the two resolution objectives which has been identified by the Board as the justification for the resolution action is "to avoid significant adverse effects on financial stability, in particular by preventing contagion".

69. The parties differ however on their assessment on whether resolution of the Appellant is truly necessary to avoid significant adverse effects on financial stability in [.], in particular by preventing contagion. The Appellant considers, in particular, that the Board errs in assuming that national insolvency proceedings would not meet to the same extent as the implementation of resolution measures the objective of avoiding significant adverse effects to financial stability. The Appellant stated in the previous cases 3/2022 and 3/2024, first, that [.] insolvency law provides for various measures similar to the resolution tool of the sale of business, and namely prepackaged insolvency plans envisaging a transfer of business in insolvency. Second, that the timing foreseen by the national insolvency framework could allow for a sufficiently quick implementation of the transfer of business in insolvency. Third, that while the main purpose of national insolvency proceedings is to satisfy creditors by realising the debtor's assets, insolvency proceedings could also include a consideration, to a certain extent, of financial stability concerns.

70. The Board contended in those previous cases that [.] insolvency law confers upon [.] insolvency courts powers in crisis management which are more constraint than those available to the Board in resolution. That, therefore, the implementation of a prepackaged insolvency plan would present uncertainties and would require a significant longer time compared to the sale of business in the resolution framework.

71. On this point the Appeal Panel already held in its decision of 30 October 2024 in case 3/2024 that, although [.] insolvency law allows for insolvency plans, these plans can only be implemented with the explicit consent of the creditors of the insolvent entity, which introduces a first cause of uncertainty about the successful outcome of the insolvency plan; even more so for banks, which present a large number of creditors with very short-term and liquid assets, including hundreds of thousands of depositors, an uncertainty that is, on the contrary, removed if resolution measures are deployed (Appeal Panel decision in case 3/2024, paragraph 144).

72. In addition, the Appeal Panel considers that the timing of implementation of an insolvency plan under [.] insolvency law may not be quick enough to ensure a timely transfer of business, comparable to the sale of business in resolution.

73. The Appeal Panel refers, in this regard, to the provisions of the [.] Insolvency Code which require, in the context of an insolvency plan proceeding, the setting of a deadline for the provision of comments by all parties involved, the issuance of summons for the voting meeting, the combination of the voting meeting with the general audit meeting, the confirmation of the plan by the insolvency court at the voting meeting, the possible appeals against the plan by one of the parties. All of those requirements are aimed at safeguarding the rights of individual creditors, rather than financial stability. Thus, they may jeopardise the feasibility of executing a transfer of business within the very short timeframe to implement a resolution scheme – typically the two-days "resolution weekend", or less, as in the Banco Popular resolution – and even within the brief, but less narrow period for a [.].

74. The Appeal Panel further notes that, in an insolvency scenario, there would also be the risk of bank licence withdrawal which may further complicate the preservation of the ongoing banking business for the time necessary to the implementation of the transfer of business under

the insolvency plan.

75. The Appeal Panel further notes that in weighing resolution against ordinary insolvency an advantage of resolution is that the Appellant could count on a recapitalization amount as a component of the MREL requirement set by the Contested Decision, calculated applying adjustments related to the expected balance sheet depletion and for the sale of business strategy. This recapitalisation amount would be used to support the sale of business envisaged by the resolution plan of the Appellant as resolution strategy, to close the funding gap, if any, between the amount of the deposits and other liabilities to be transferred and the available assets.

76. In an insolvency plan proceedings under [.] insolvency law, on the contrary, this recapitalisation amount would not be available in the form of prepositioned MREL in its RCA component.

77. The Appeal Panel further notes that, even assuming (*quod non*) that a transfer of business could be achieved and implemented under an insolvency plan in similar conditions to resolution, using the [.], [.]. [.] may need time.

78. Those uncertainties may also include, in the Appeal Panel's view, the fact that the [.] for the [.] do not, at least expressly, contemplate support measures in insolvency, The Appeal Panel notes in this connection that § 23 of the [.] describe support measures as those measures that "serve to *avert a threat to the [.] as a going concern*, in particular by ensuring liquidity and solvency within the meaning of Section 49(1) sentence 1 of the [.]".

79. The Appeal Panel finds therefore that the Board did not commit any error in assessing that, even assuming that the Appellant in case of failure could try to implement a business transfer by means of an insolvency plan under [.] insolvency law, there are significant uncertainties surrounding the successful and timely implementation of such a plan. The Board was therefore correct in finding that resolution objectives could not be satisfied to the same extent through the use of national insolvency proceedings. Likewise, the Appeal Panel considers that the Contested Decision has stated clearly and sufficiently the reasons on which it is based in this respect.

80. The Appellant also raises however the additional claim that, regardless of whether the Appellant could be liquidated promptly under [.] insolvency law, the Board is wrong in finding that its failure would trigger "significant adverse effects on financial stability" in [.] as required by Article 14(2)(b) SRMR. In other words, in the Appellant's view, the Board erred in considering resolution necessary to prevent adverse effects on financial stability and did not sufficiently and clearly stated the reasons supporting the conclusion that the failure of the Appellant under ordinary insolvency law would have contagion effects, including within the [.] banks [.], which would jeopardise the [.] banks sector in [.] and then financial stability in [.].

81. The Appellant claims, specifically, that the Board erred in its inference of results from EBA and ECB stress tests in the identification of the adverse scenario of system-wide event.

82. On this point, the Appeal Panel agrees with the Board that the stress test results from the 2023 EBA EU-wide and the 2023 ECB SREP exercises are an appropriate reference as a first proxy to the health of banks collectively and individually in a system-wide event. The EU-wide stress tests estimate the impact on banks' capital that would result from an underlying extreme, but plausible macroeconomic deterioration affecting all banks simultaneously. The EU-wide stress test exercise is carried out on a sample of banks covering approximately 75% to 80% of the banking sector assets in the Euro area.

83. The Appellant argues, however, that it is incorrect to attempt to draw inferences on the basis of a sample of entities that are not homogeneous, or similar enough to the 361 entities that form the group of [.] banks which "*differ significantly in important characteristics such as size and business model*" and in that connection the Appellant recalls the [.] stress test already considered above.

84. In light of the arguments put forward by the Board in its written submissions concerning the different adverse scenario assumptions of the [.] stress test, the Appeal Panel reiterates that it is not persuaded that the failure from the Board to include in its assessment the data resulting from the [.] stress test is sufficient to uphold the ground of appeal and to conclude that the Board was mistaken in concluding that the liquidation of the Appellant may have contagion and financial stability effects which justify resolution or put forward insufficient reasons to support its conclusion.

85. The Appeal Panel refers also to the explanations given by the Board, in response to the comment of the Appellant in the RTBH process, in the RTBH assessment memorandum (comment 1, page 15-19, of Section II of the Contested Decision), that further supports a finding of reasonableness and plausibility of the Board's assessment.

86. Furthermore, the Appeal Panel also reiterates that resolution planning requires making assumptions of future scenarios to minimize the harmful consequences in each scenario. Unlike other areas of policy, bank crisis management requires factoring in unlikely events (including remote and rare events, "black swans"). This means that the Board is not required to estimate what will happen in a probable scenario, but what may happen in an improbable, even remote one. This type of assessment, thus, is framed not so much in terms of risk, but of uncertainty. Given the uncertainty and the economic stakes, the public interest assessment now simultaneously considers two hypothetical failure scenarios: one idiosyncratic; the other in the context of a system-wide crisis. The system-wide 'events' scenario was adopted by the SRB starting from the 2021 MREL Addendum. The co-legislators have shared this logic and are currently taking it one step forward in the context of ongoing regulatory reforms, but the assessment of bank failure in the context of a system-wide event is in line with the current text of the SRMR, and neither party has argued otherwise. The idea of "system-wide event" captures the logic of preventative decisions under uncertainty.

87. Thus, it is important to note that, in justifying the more burdensome strategy of prepositioning an MREL recapitalisation amount (hereinafter "**RCA**"), the Board is contemplating a scenario of possible contagion effects which may trigger financial instability at a regional level in the midst of a systemic crisis.

88. The Appeal Panel wishes also to acknowledge that a network of [.], [.] or other entities affiliated to an [.] present special features which call for targeted adjustments of the prudential framework and have also indirect implications in the crisis management context. This is duly reflected by the special provisions of Article 10 and 113(7) CRR. This also has clear implications for crisis prevention. The [.] within the meaning of Article 113(7) of the CRR. For this purpose, the [….]

89. Therefore, the Board is correct to consider, in the context of its public interest assessment, how the failure of one or more [.] banks may play out vis-à-vis the [.]. It is also correct to include an assessment of the [.] to trigger contagion effects to other [.]. This is a remote, yet possible scenario, and resolution planning must consider remote, yet possible scenarios as its starting point.

90. The Appeal Panel wishes also to acknowledge that in [.], history offers a comforting track record of successful recovery actions promoted and supported in the past by [.], which have so far prevented insolvency and contagion[1].

91. In this context, and specifically in connection with the case at hand, a fundamental question, in the Appeal Panel's view, is what evidentiary burden is to be discharged by the Board to support complex technical assessments based on future, hypothetical scenarios concerning contagion within the [.] and its possible effects on financial stability for [.].

92. In antitrust, where fundamental rights concerns trump over any other considerations, there has traditionally been a call to treat 'false positives' (e.g. erroneous antitrust convictions and over-deterrence) as costlier than 'false negatives' (i.e. erroneous acquittals and under-deterrence) and ask for a higher evidentiary burden for those alleging an antitrust violation, through a 'preponderance of evidence' (in American terms) or 'balance of probability' in European terms.

93. The Appeal Panel considers, however, that this cannot be extrapolated as such to resolution, where the financial stability implications of false negative are potentially catastrophic and financial stability concerns trump over other considerations (save for procedural safeguards for fundamental rights).

94. When addressing supervisory and resolution decisions, European courts have acknowledged a degree of technical discretion granted to the expert judgement of supervisory and resolution authorities, while providing a demanding scrutiny that the evidence relied on by the ECB and SRB is factually accurate, reliable and consistent, it constitutes *all* the relevant information which must be taken into account in order to asses a complex situation *and* is capable of supporting the conclusions drawn from it (judgment of the General Court 1 June 2022, Fundación Tatiana Pérez v SRB, T-481/17, ECLI:EU:T:2022:311, Del Valle Ruiz v SRB, T-510/17, ECLI:EU:T:2022:312, Eleveté Invest Group v SRB, T-523/17, ECLI:EU:T:2022:313, Algebris v Commission, T-570/17 ECLI:EU:T:2022:314 and, Aeris Invest v Commission and SRB, T-628/17 ECLI:EU:T:2022:315).

[2] [……]

95. The administrative review of the SRB Appeal Panel is even more exacting on the technical assessment of facts because this can be better appraised if the composition of administrative bodies ensures technical expertise beyond legal knowledge. This is stated in the case law of the Court of Justice (see judgment of the Court (Fifth Chamber) of 9 March 2023, case C-46/21 P ACER v Aquind ECLI:EU:C:2023:182, paragraphs 56-57, 59, 63-67), and of the General Court (Order of 6 September 2023, in case T-212/20, Operator Gazociągów Przesylowych Gaz-System S.A. v ACER, ECLI:EU:T:2023:525).

96. However, there are also limits to the review undertaken by the Appeal Panel. First, the Appeal Panel's review is based on an adversarial procedure (*ACER v Aquind,* paragraph 59; judgment of the General Court of 20 September 2019, case T-125/17 BASF v ECHA, ECLI:EU:T:2019:638) and cannot lead to a *de novo* evaluation (case T-125/21, *BASF v ECHA* paragraphs 59, 121). However, the Appeal Panel takes into consideration the decision's elements of fact and law (Order of 6 September 2023, in case T-212/20, Operator Gazociągów Przesylowych Gaz-System S.A. v ACER, ECLI:EU:T:2023:525, paragraphs 35-36), while respecting the margin of appreciation of the Board conferred by the applicable rules.

97. The applicable rules, the SRMR, suggest that in this case the Appeal Panel must review the plausibility of the Board's assessment. This is not because the Appeal Panel exercises a marginal review, but because the statutory scheme of the SRMR in this case requires the Board to make its assessment based on its expert judgement not by estimating the probable scenario, but by simulating, under conditions of uncertainty, scenarios that are improbable, but plausible and reasonable.

98. In light of this principle, the Appeal Panel finds that the first limb of the third ground of appeal cannot be upheld, because the assessment made by the Board, which cannot be subject to a *de novo* evaluation of the Appeal Panel, while not perfect, can be considered sufficiently reasonable and plausible for the reasons explained below.

99. The financial stability effects that, in the Board's view, would originate in the adverse scenario of a system-wide event from the failure of the Appellant, are assessed in the Contested Decision taking into consideration different channels of contagion and using a set of qualitative and quantitative indicators of financial linkages.

100. The Board has performed a multiple step quantitative analysis, described in the recitals of the Contested Decision.

101. As a first step, the Board took as a basis the EBA/ECB stress test as a first proxy for the health of banks in a system-wide event scenario. The Appellant questions this, because it would have no reliable significance for the large number of significantly smaller [.] banks. The Appeal Panel held, in case 3/2024 that it is reasonable to rely on the EBA/ECB stress test as a basis to ensure a level playing field among entities in the Banking Union. The Appeal Panel also expressed concern that more specific data may be left aside and expressed its wish that in its future practice the Board could additionally consider in its analysis any targeted stress test performed by national competent authorities, if available and pertinent. However, it also held that the Appeal Panel was not persuaded that this would have changed the assessment in the

case. In this case, the Board has expressed no desire to revise its methodology, taking into account any data resulting from national exercises, and, on the contrary, its submissions reiterate its "misgivings" about uncritically referring to national stress tests, which may use different methodologies and assumptions (including different worst case scenarios), and that because adjustments dependent on more granular data could jeopardise the necessary level playing field.

102. The Appeal Panel fails to be persuaded by this logic, since under no scenario should the Board be asked to incorporate any additional results "uncritically", but rather, to examine the more granular data if they are easily available, and then "critically" weigh whether the effect of the additional information gained is outweighed by the distortion resulting from the fact that said data were generated under different assumptions. A level playing field should not be tantamount to one size fitting all.

103. However, the Appeal Panel reiterates its conclusion in case 3/2024 that the dataset used by the Board is reasonable, and including the data concerning LSIs cannot be imposed. The Board's arguments, and its clarifications during the hearing, suggest that it does not flatly refuse to consider readily available granular data at a national level, but that, in this specific case, given the different assumptions and scenario used by the national authority, it could not consider the data without distorting the results.

104. Then, the Board has used a network model internally developed, in order to measure direct contagion effects. Direct contagion risks are assessed using data on interbank exposures and intra-financial sector holdings of own funds and debt instruments issued by the resolution entity. The Contested Decision further explains that "The model takes into account the interbank exposures across Banking Union banks and estimates the propagation of initial exogenous losses through a network of Banking Union banks, capturing different losses linked to the liquidation of a bank, losses by creditors following the write-down of liabilities of the failed bank as well as mark-to-market losses for the trading portfolio of all banks in that network. The outcome of that analysis under the system wide event scenario places the Appellant close to median system loss for [.] banks under SRB remit".

105. The Appeal Panel sought in this case, as it sought in case 3/2024 clarification from the Board of the specifics of the contagion model, and the Board duly provided the requested information. The Appeal Panel considers here, as it considered then that the Board could have been more detailed in the information provided to the Appellant regarding the functioning of the model.

106. However, the Appeal Panel considers now, as it considered in case 3/2024 that the more determinant a specific technical tool, such as a model, is for the assessment leading to a binding decision, such as classifying an entity as a resolution entity, determining the chosen resolution tool, or setting the level of MREL, the greater the detail that the Board should provide to the addressee of the decision.

107. In that respect, the Board has not provided any further detail on the functioning of the model in recital 10. If anything, the corresponding recitals are more succinct in the information

provided than the corresponding recitals in the decision challenged in case 3/2024. Should the decision be based exclusively on the model, this level of detail would, in the Appeal Panel's view, fall short of the standard of accuracy, reliability and consistency, and especially the requirement that the evidence shown constitutes all the relevant information which must be taken into account in order to asses a complex situation and capable of supporting the conclusions drawn from it, outlined above.

108. However, the Appeal Panel considers that the quantitative analysis placed a bank "close to median system loss for [.] banks under SRB remit", but was inconclusive. Thus, the Board complemented this quantitative analysis of direct contagion effects with an analysis of indirect contagion effects, which considers the entity's relative size compared to other entities of the same kind, the similarities of business models, and the reputational risks for the similar entities, in a context where overall system fragility could more easily spark a loss of trust in the system.

109. Thus, even if the Board could have been more detailed in describing the methodology used in its quantitative analysis, the Appeal Panel finds, as it did in case 3/2024, that its failure to do so is not sufficient to remit the case, nor to conclude that the Board was mistaken when it found that liquidating the Appellant under normal insolvency proceedings may have contagion and financial stability effects which justify resolution. The narrative presented by the Board in recitals (11) to (16) presents a credible case of how, in the context of a system-wide event resulting in a significant capital depletion across the board, the Appellant would represent an important source of contagion [.]. This would not be a probable scenario, but an improbable, yet plausible one, given that the goal of MREL and resolution planning is to protect against unlikely events. In that scenario, as it correctly did in its MREL decision in case 3/2024, the Board correctly assumed, that, upon the failure of the Appellant, the […].

110. In conclusion, while regretting the paucity of details in the Board's quantitative analysis, the Appeal Panel acknowledges that the fact that such analysis was inconclusive mitigates the relevance of such shortcomings. The qualitative analysis, on the other hand, is sufficiently detailed and explicit to present a credible case of contagion in the context of a system-wide event.

(c) On the first limb of the third ground of appeal.

111. By the first limb of the third ground of appeal, the Appellant submits that the Board has erred in identifying the provision of transactional accounts as a critical function within the meaning of Article 2(1)(35) BRRD and that the statement of reasons supporting such finding is insufficient. The Appellant alleges, in particular, that the Board's assessment is incorrect because *(i)* it has not considered the relevant transactional accounts experiencing a significant negative impact and, therefore, needing substitution; *(ii)* the substitution capacity throughout [.] assumed by the SRB is inappropriate; and *(iii)* the conclusion on the loss of associated account information is incorrect.

112. The Appeal Panel acknowledges the importance of the finding of the critical function of the transactional accounts for the Appellant. This is even more so considering that the Appellant, as noted, […]. This means that, when considering the provision of transactional accounts, also

this [.] should be duly and positively taken into account.

113. It is thus pertinent to analyse the Board's assessment and statement of reasons in support of the Contested Decision in this regard.

114. The data sources for the methodology are the questionnaires distributed to the Appellant on the criticality assessment of payment functions, starting in 2021, and reiterated in 2023. This was followed, in 2024, by a more specific reference, in the "Priority Letter 2024", to the need for a deeper assessment of transactional accounts with regard to their potential identification as a critical function. All this was accompanied by different presentations, in November 2024 and July 2025 indicating the Board's decision to identify transactional accounts as a critical function. Thus, the Board was transparent and gave the Appellant fair and early warning on its thinking on the issue, and the source of data for its methodology.

115. The conceptual components of the Board's methodology have to be aligned with the legal concept of "critical functions", defined in Article 2 (1) (35) of Directive 2014/59/EU (BRRD), as *"activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the real economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations".*

116. The Board's methodology assesses (i) the impact of a failure scenario on transactional accounts, and (ii) the substitutability of said accounts, is in line with the main elements that must be analysed.

117. Both parties accept as sound a methodology based on measuring the "impact", in terms of the number of customers or accounts affected, and measuring the "substitutability" in terms of the substitution capacity of the banking system. As a first step, a high number of customers or accounts leads to conclude that a failure of the institution would cause a high impact. Then, as a second step, dividing the number of customers or accounts (numerator) by the banking system's daily onboarding capacity (denominator) measures the substitutability in terms of the number of days that it would take to onboard the affected customers or accounts, with a number above the 7-day window for [...] leading to conclude that the service could not be easily substituted.

118. The parties disagree about the criteria to assess both the "impact", and the "substitutability".

119. On the "impact", the Board focuses on the high absolute number of customers potentially affected, and not on the Appellant's market share. The Appellant questions the Board's figure of affected customers. The Board departs from the […] transactional accounts provided by the Appellant, and then lowers that number, by considering only the number of "recurring customers", amounting to nearly [.] ([.]). The Appellant questions this methodology, arguing that the Board should take into account that, according to the Appellant, [.] of private current account holders have further accounts in other banks, which, in the Appellant's view, means that those customers could *"continue to carry out payment transactions seamlessly"*, or at

least heed the national resolution authority assumptions, which presume that [.] of all transactional account customers already have an account with another bank, and thus only [.] are relevant customers.

120. The Appeal Panel notes that the [.] assumption of relevant customers would apply to the total number of accounts, leaving a number of affected accounts not far from the one arrived at by the Board. The Appeal Panel moreover notes, that, while it shares the Appellant's view that for many customers who have an account with another bank, the unavailability of their transactional account would likely not prevent nor even delay their access to the payment system and the other functions based on their transactional accounts, it also understands the logic of the "recurring customers" criterion adopted by the Board, which relies on proxies of customer behaviour. In that context, it may well be that lacking temporary access to transactional accounts is likely to be a "disruption" for customers who use said accounts recurringly and that the "sudden disruption" may have *"a material negative impact on the third parties, give rise to contagion or undermine the general confidence of market participants due to the systemic relevance of the function for the third parties and the systemic relevance of the institution or group in providing the function"*, as stated by Article 6 (1) of Delegated Regulation (EU) 2016/778. The Appeal Panel therefore, while it is not fully persuaded that those quantitative data may be enough to infer by themselves the conclusions drawn by the Board, notes that as stated by the Board, and discussed during the hearing, the assessment of the "impact" is not a mere quantitative exercise, i.e., it is not only the number of accounts or customers that matters.

121. As the Board stated, e.g., in Recital (6) of the Contested Decision, the nature of the accounts, as account that are used for specific day to day transactions by retail customers, and the relative geographical concentration of the account-related service, which means that the impact of a disruption or discontinuity would be more severely felt in a specific region, also militate in favour of the Board's assessment of impact, and lead to conclude that it was not affected by an error of assessment.

122. Regarding the "substitutability", the Board estimates a time to substitute the Appellant's transactional accounts of more than 9,5 days, well above the threshold of 7 days for deposit payout. In contrast, the Appellant reaches a figure of 5,4 days, below the threshold of 7 days.

123. Using the Board's resulting figure of 9,5 days as a basis the Appellant concludes that the daily substitution capacity used by the Board as a basis ([.] customers per day, resulting from dividing the number of recurring customers by the 9,5 days), grossly underestimates the actual onboarding capacity of the system. The Board, for its part, insists that its methodology is based on the data reported in the questionnaires of the Board and the national resolution authority.

124. The Appeal Panel finds that using the questionnaires as a basis is an acceptable methodological choice. The Appellant criticises that the questionnaires were distributed to a mere [.] entities, as the Board points out, these entities included all the significant institutions in the market, and also [.] less significant institutions, which together represent [.] of the balance sheet of all national banks. The Appellant's criticism that these entities were not representative of the national market in transactional accounts because, e.g., some of the

largest banks were foreign institutions, which provide significantly below-average services for private payment transaction customers is well taken, but this can be addressed by an adequate extrapolation, from the amounts resulting from the survey or questionnaire, to the amounts that could be expected in the whole market, as further discussed below.

125. The Appeal Panel finds that there is no error in the Board's methodological decision to ask the banks about their onboarding capacity under three scenarios, i.e., (i) historical experience (largest numbers of customer requests in 5 years), (ii) estimation in business as usual, and (iii) estimation when using increased resources, and to use the third estimate by each entity as a basis to calculate the onboarding capacity of the system as a whole.

126. Conversely, the Board's failure to adequately extrapolate the daily onboarding capacity numbers resulting from the survey/questionnaire, to the totality of the national banking system, is questionable, as a methodological choice. The Board acknowledges that the questionnaire was distributed to entities representing 2/3 of the balance sheet of national banks, a decision that falls within the Board's margin of discretion. However, assuming that, in case of an Appellant's failure only those banks will have onboarding capacity does, in principle, not appear reasonable. Leaving aside whether the entities left out of the questionnaire could, as alleged by the Appellant, have a proportionally greater onboarding capacity, due to their being proportionally more present in the provision of transactional account services, one should, in principle, assume that they would have some capacity at all.

127. The Board has alleged, in its submissions and during the hearing, that it was using its best efforts to assess a complex situation, and that it might have been able to refine this assessment if the Appellant had provided the requisite information during the multiple exchanges between the parties, dating back to 2021, when the Board began highlighting the importance of transactional accounts and the information about them. The Appellant alleged that it might have been able to provide better information if the purpose of the information requests had been clearer. Be it as it may, the Appellant's effort to challenge the Board's methodology by offering more precise and granular data on onboarding capacities at a sectoral level to substantiate its position, might have been put to better use if it had been facilitated in earlier RPCs, to integrate a more robust methodology for the substitutability of the transactional accounts.

128. The Appeal Panel must note, however, that the Board's methodological choices in light of challenges of access to information is not explained by the Board, which, in general terms, limits itself to provide high level information on the aspect of substitutability. Specifically, the corresponding part in Recital (6) reads:

> "As to the substitutability of the function in its market, in light of the significant number of accounts and customers serviced by [.] and the concomitant time and resources that onboarding customers and opening accounts may require, the Board has concluded that the function of provision of transactional accounts ([.]) cannot be replaced in an acceptable manner and within a reasonable timeframe without impact on financial stability. [.] is among the top banks in [.] regarding the number of recurrent household customers' [.] and substitution would take more than 7 days on a national level. The time for substitution would be even longer (more than 14 days) when considering [.]. The conclusion is strongly supported by the horizontal analysis of

the 2024 [.] and SRB questionnaire ("[.]") on transactional accounts ([.])".

129. Compared to the part on "impact", the explanation of "substitutability" is characterised by vaguer statements, which point to the source of the information (2024 [.] and SRB questionnaire) but not to the methodology used for the calculation.

130. The text in the RTBH memorandum assessment which forms an integral part of the Contested Decision, provides more detail, including a specific reference to the [.] days estimated to be necessary to onboard the Appellant's customers, a figure also shared in the presentation for one of the IRT's seminars, or the percentage of the banking assets represented by the entities responding to the questionnaire. However, as far as the Appeal Panel can ascertain, the Board has never explained why it assumed that only the banks responding to the questionnaire would have onboarding capacity.

131. Whereas the Appeal Panel has repeatedly acknowledged the Board's expert judgment and margin of appreciation in making complex economic assessments, especially in situations involving uncertainty, it must also follow the case law of European Courts, which insist that the Court (or, in this case, quasi-judicial body) must:

> *"establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it"* (judgment of 4 March 2023, C-389/21 P, European Central Bank (ECB) v Crédit lyonnais, EU:C:2023:368, paragraph 56, citing judgments of 26 March 2019, Commission v Italy, C-621/16 P, EU:C:2019:251, paragraph 104, and of 11 November 2021, Autostrada Wielkopolska v Commission and Poland, C-933/19 P, EU:C:2021:905, paragraph 117).

132. In this case, although in general terms the evidence contains all the relevant information which must be taken into account in order to assess the complex situation, on the matter of the substitutability of the transactional accounts it is doubtful whether the decision is fully capable of substantiating the conclusions drawn from it, at least if one takes into consideration the text of the Contested Decision only.

133. However, the Appeal Panel must also acknowledge that, as argued by the Board, the rejection of the second limb of the third ground of appeal makes the first limb of this ground devoid of purpose. According to the case law of European courts a plea for annulment is inadmissible on the ground of lack of interest in bringing proceedings where, even if it were well founded, the annulment of the contested act on the basis of that plea would not give the applicant satisfaction (judgment of 9 June 2011, *Evropaïki Dynamiki v ECB*, C-401/09 P, EU:C:2011:370, paragraph 49 and case law cited). In the Appeal Panel's view, the same principle applies to appeals before the Appeal Panel.

134. In the present case, as correctly noted by the Board in its submissions, once the second limb of the third ground is rejected, the adjudication of the first limb of that ground can no longer give the Appellant satisfaction on the remedy sought, because the Appellant will remain validly classified as a resolution entity and, therefore, lawfully subject to the (same) MREL calibration set out in the Contested Decision, irrespective of whether the first limb is founded

or not. In other words, there is no room for the Appeal Panel to remit the Contested Decision to the Board to the extent that the MREL requirement is found validly based at least upon the assessment concerning the risk of contagion and the adverse effects on financial stability in [.].

135. It follows that, once the second limb of the third ground is rejected, the first limb of that ground is devoid of the purpose for which it has been raised.

136. The Appeal Panel also acknowledges that, as noted by the Board, this conclusion is not altered by the Appellant's allegation that the identification of a critical function "*is associated with considerable implementation effort*". During the hearing the Appellant offered some additional remarks regarding the nature of the burden that it would allegedly be subject to. As far as the Contested Decision is concerned, however, the identification of a critical function does not trigger by and of itself any new or different legal obligation to which the Appellant was not subject before the identification of such critical function, especially with regard to the determination of the MREL, which is the decision that falls within the remit of the Appeal Panel. The only consequence directly resulting from the identification of the critical function for resolution planning purposes is that the Board may then assume that a resolution action would be in the public interest in order to ensure the continuity of that critical function.

On those grounds, the Appeal Panel hereby

Dismisses the appeal.

Helen Louri-Dendrinou Vice-Chair SIGNED	Kaarlo Jännäri SIGNED	David Ramos Muñoz SIGNED

Marco Lamandini Co-Rapporteur SIGNED	Christopher Pleister Chair and Co-Rapporteur SIGNED

For the Secretariat of the Appeal Panel:

[.]

SIGNED