

GENERAL COURT

Action brought on 28 May 2020 — ACMO and Others v SRB

(Case T-330/20)

(2020/C 279/54)

Language of the case: English

Parties

Applicants: ACMO Sàrl (Luxembourg, Luxembourg) and 69 other applicants (represented by: T. Soames, N. Chesaites, lawyers and R. East, Solicitor)

Defendant: Single Resolution Board

Form of order sought

The applicants claim that the Court should:

- annul Article 2 of the Single Resolution Board's decision SRB/EES/2020/52 of 17 March 2020 determining whether compensation needs to be granted to the shareholders and creditors in respect of which the resolution actions concerning Banco Popular Espanol S.A. have been effected ('the contested decision'); and/or
- annul Article 1 of the contested decision; and/or
- annul Article 3 of the contested decision; and/or
- in the alternative, annul the contested decision in its entirety;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging that the contested decision, and in particular the determination that no compensation is due, pursuant to Article 76(1)(e) of Regulation (EU) 806/2014 of the European Parliament and of the Council ⁽¹⁾ (Article 2), to creditors (including the applicants), is vitiated by manifest errors of assessment and errors of law, and therefore in violation of the applicants' right to property. Specifically, the applicants argue that the SRB committed manifest errors of assessment and errors of law by adopting the contested decision on the basis of a valuation report ('Valuation 3 Report') and a 'clarification' thereof appended to the contested decision, authored by Deloitte Réviseurs d'Entreprises ('Deloitte') which determined that the applicants would not have realised any recoveries if Banco Popular had entered normal insolvency proceedings in Spain.
2. Second plea in law, alleging that the SRB's decision to appoint Deloitte to undertake Valuation 3 was vitiated by manifest errors of assessment and/or errors of law in that Deloitte did not satisfy the fundamental criterion of independence under Article 20(16) of Regulation (EU) 806/2014.
3. Third plea in law, alleging that the SRB improperly delegated its decision-making powers under Regulation (EU) 806/2014 to Deloitte in violation of the principle laid down by Union case law in the seminal Case 9/56 *Meroni*. ⁽²⁾

⁽¹⁾ Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ 2014 L 225, p. 1).

⁽²⁾ Judgment of 13 June 1958, *Meroni v High Authority*, Case 9/56, EU:C:1958:7.