

# SINGLE RESOLUTION BOARD

## **Announcement with regard to the Decision of the Single Resolution Board 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 Español SA have been effected (SRB/EES/2020/52) (the ‘Decision’)**

(2020/C 91/02)

By means of the Decision, the Single Resolution Board determines that the shareholders and creditors in respect of which the resolution actions concerning Banco Popular Español SA have been effected (‘Affected Shareholders and Creditors’) shall not be entitled to compensation pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014 of the European Parliament and of the Council <sup>(1)</sup>.

### **Summary of the Decision of the Single Resolution Board**

On 7 June 2017, the Single Resolution Board (‘SRB’) took a decision concerning the adoption of a resolution scheme in respect of Banco Popular Español SA (‘Institution’) <sup>(2)</sup>, which was endorsed by the European Commission <sup>(3)</sup>. Pursuant to Articles 5 and 6 of that decision, the resolution action in respect of the Institution consisted in the application of the sale of business tool to transfer the shares in the Institution to Banco Santander SA (under Article 24(1)(a) of Regulation (EU) No 806/2014), following the exercise of the power to write down and convert the capital instruments of the Institution (under Article 21 Regulation (EU) No 806/2014).

Following the implementation of the resolution action by FROB, in line with Article 20(16) and Article 20(17) of Regulation (EU) No 806/2014 and Article 3 of the Commission Delegated Regulation (EU) 2018/344 <sup>(4)</sup>, the SRB had to ensure that a valuation was carried out by an independent valuer for the purposes of assessing whether the Affected Shareholders and Creditors would have received better treatment if the Institution had entered into normal insolvency proceedings (‘Valuation of difference in treatment’ or ‘Valuation 3’).

Deloitte Réviseurs d’Entreprises (‘Deloitte’) <sup>(5)</sup> was the independent valuer hired to perform the required valuations in the context of the resolution of the Institution. On 14 June 2018 <sup>(6)</sup>, the SRB received by mail Deloitte’s final report on the Valuation of difference in treatment in respect of the Institution’s resolution (‘Valuation 3 Report’), attached to the Decision as Annex I. It follows from the Valuation 3 Report that there is no difference between the actual treatment of the Affected Shareholders and Creditors and the treatment that they would have received had the Institution been subject to normal insolvency proceedings at the date of resolution.

<sup>(1)</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

<sup>(2)</sup> SRB/EES/2017/08 (OJ C 222, 11.7.2017, p. 3).

<sup>(3)</sup> Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español S.A. (OJ L 178, 11.7.2017, p. 15).

<sup>(4)</sup> Commission Delegated Regulation (EU) 2018/344 of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution (OJ L 67, 9.3.2018, p. 3).

<sup>(5)</sup> In accordance with the relevant specific contract, Deloitte engaged personnel from its offices in Belgium, Spain and the United Kingdom.

<sup>(6)</sup> The attached Valuation 3 Report reflects the changes made to it by Deloitte’s addendum, which corrected only clerical errors, as received by the SRB by e-mail on 31 July 2018.

In view of the above, by means of its notice of 2 August 2018 <sup>(7)</sup> ('Notice'), the SRB decided on a preliminary basis that it was not required to pay compensation to the Affected Shareholders and Creditors pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014.

Furthermore, in order for the SRB to take its final decision on whether compensation needed to be granted, i) the SRB invited, by the Notice, the Affected Shareholders and Creditors to express interest in exercising their right to be heard (registration phase), and ii) at a later stage, invited the Affected Shareholders and Creditors, who expressed their interest and whose status has been verified by the SRB to submit their comments on the SRB's preliminary decision and its underlying reasoning, as set out in the Notice (consultation phase).

At the end of the consultation phase, given that the Affected Shareholders and Creditors raised a number of elements that were not related to the SRB's preliminary decision and its underlying reasoning, as set out in the Notice, the SRB first assessed the relevance of such comments. Subsequently, the SRB grouped all relevant comments, taking into account the fact that Affected Shareholders and Creditors have provided identical or similar comments. The SRB carefully examined the relevant comments related to its preliminary decision but not to the Valuation 3 Report. As regards the relevant comments related to the Valuation 3 Report, in order to reach its conclusion whether these comments could impact its preliminary decision, the SRB requested Deloitte, in its role of independent valuer, to provide a document with its independent assessment of these relevant comments and to consider whether the Valuation 3 Report remained valid in light of these comments.

On 18 December 2019, Deloitte provided the SRB with its assessment ('Clarification Document'), attached to the Decision as Annex II. In the Clarification Document, after reviewing the comments of the Affected Shareholders and Creditors, related to the Valuation 3 Report, as transmitted by the SRB to Deloitte, Deloitte confirmed that both the strategy and various hypothetical liquidation scenarios detailed in the Valuation 3 Report, as well as the methodologies followed and analyses used therein, remain valid.

In light of the assessment of the relevant comments submitted during the right to be heard process regarding the independence of Deloitte, the SRB considers that, in carrying out the tasks related to the Valuation 3, Deloitte has acted as an independent valuer in line with the requirements of Article 20(1) of Regulation (EU) No 806/2014 and Chapter IV of the Commission Delegated Regulation (EU) 2016/1075 <sup>(8)</sup>.

Moreover, taking into account the Valuation 3 Report and the Clarification Document, the SRB considers that the Valuation 3 Report is an appropriate basis for the SRB to adopt the Decision. The SRB thus concludes that there is no difference between the actual treatment of the Affected Shareholders and Creditors and the treatment that they would have received had the Institution been wound up under normal insolvency proceedings at the date of resolution.

Therefore, by this, the SRB determines that the Affected Shareholders and Creditors shall not be entitled to compensation from the Single Resolution Fund in accordance with Article 76(1)(e) of Regulation (EU) No 806/2014.

The Decision is addressed to FROB, in its capacity as National Resolution Authority.

More information about the Decision of the SRB and its annexes, i.e. the Valuation 3 Report (Annex I) and the Clarification Document (Annex II), can be found on the SRB's official Internet: <https://srb.europa.eu/en/content/banco-popular>

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<sup>(7)</sup> Notice of the Single Resolution Board of 2 August 2018 regarding its preliminary decision on whether compensation needs to be granted to the shareholders and creditors in respect of which the resolution actions concerning Banco Popular Español SA have been effected and the launching of the right to be heard process (SRB/EES/2018/132) (OJ C 277 I, 7.8.2018, p. 1).

<sup>(8)</sup> Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, p. 1).