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## ÁMBITO DE COMPETENCIAS DE LA UE

Mercados financieros

## PROBLEMA

Falta de adopción de una decisión oportuna [artículo 17 CEBCA]

Idiomas disponibles: EN • Otras lenguas (1) ▾

## Decision in cases 1141/2019/SRS, 1417/2019/SRS and 1015/2019/SRS on the Single Resolution Board's alleged failure to take a timely decision on whether to compensate creditors and shareholders of a Spanish bank

## DECISIÓN

**CASO** [1015/2019/SRS](#)**ABIERTO EL** Martes | 10 septiembre 2019**DECISIÓN DE** Martes | 03 diciembre 2019**INSTITUCIÓN CONCERNIDA** Junta Única de Resolución ( No se constató mala administración )**CASO** [1141/2019/SRS](#)**ABIERTO EL** Martes | 10 septiembre 2019**DECISIÓN DE** Martes | 03 diciembre 2019**INSTITUCIÓN CONCERNIDA** Junta Única de Resolución ( No se constató mala administración )**CASO** [1417/2019/SRS](#)**ABIERTO EL** Martes | 10 septiembre 2019**DECISIÓN DE** Martes | 03 diciembre 2019**INSTITUCIÓN CONCERNIDA** Junta Única de Resolución ( No se constató mala administración )

The case concerned the time taken by the Single Resolution Board (SRB) to reach a final decision concerning whether to compensate affected creditors and shareholders of a Spanish bank.

The Ombudsman considers that the time the SRB is taking to assess whether to compensate affected creditors and shareholders is reasonable considering the particular circumstances of the case. She notes, in particular, that the SRB had collected approximately 23,800 individual comments on the matter and had set up processes to deal with them, including by hiring interim staff and redeploying other staff. She also takes the view that the SRB has sought to keep those affected informed, at every stage of the process, through general and individual communications. Thus, the Ombudsman found no maladministration.

## Background to the complaint

1. On 7 June 2017, the Single Resolution Board ('SRB') adopted a decision whereby it put a Spanish bank ('Banco Popular Español S.A.', henceforth 'Banco Popular') into resolution and adopted a resolution scheme.<sup>[1]</sup> Specifically, the SRB transferred all shares and capital instruments of Banco Popular to Banco Santander for the price of EUR 1. This followed a decision of the European Central Bank (ECB), the previous day, that Banco Popular was "*failing or likely to fail*".
2. The Single Resolution Mechanism Regulation ('the SRM Regulation')<sup>[2]</sup> foresees that affected shareholders and creditors of the bank may be entitled to compensation if, as a result of the bank resolution, they have been treated worse than if the bank had been wound up under normal insolvency proceedings. This decision on compensation requires an independent valuation report ('Valuation 3 report'). The Valuation 3 report in this case was drafted by a large auditing firm. On the basis of this assessment, the SRB '*decided on a preliminary basis*' not to compensate shareholders and creditors.<sup>[3]</sup>
3. In line with Article 41(2)(a) of the EU Charter of Fundamental Rights, the SRB gave affected creditors and shareholders the possibility to comment on its preliminary decision not to compensate them.
4. The SRB, in this context, organised a procedure to allow affected creditors and shareholders to exercise their right to be heard. During a first phase, affected creditors and shareholders were invited to express their interest in exercising their right to be heard. At that stage, the SRB verified whether the persons who expressed an interest in being heard were affected shareholders or creditors. During a second phase, these creditors and shareholders were invited to submit their comments.
5. Following the end of the second phase, the European Ombudsman received a number of complaints concerning the SRB's failure to take a timely decision concerning whether to compensate affected shareholders and creditors of Banco Popular.

## The inquiry

6. The Ombudsman opened an inquiry into the time the SRB is taking to reach a final decision concerning whether to compensate affected creditors and shareholders of a Spanish bank.
7. In the course of the inquiry, the Ombudsman's inquiry team inspected the SRB's file on this case and met with SRB staff.

## Arguments presented to the Ombudsman

8. The complainants took issue with the time the SRB was taking to reply to their comments and to take a final decision on whether to grant them compensation. The complainants argued that the SRB had not acted in line with the requirement to take decisions within a reasonable period of time, as provided for in the case law and in the Charter of Fundamental Rights. The complainants also claim that the SRB should provide them with an indicative date by when it will take its final decision on compensation.
9. During the meeting with the Ombudsman's inquiry team, the SRB gave an overview of the number of comments it had received and explained the process of collecting, reviewing and categorising these comments. It stated that it had received 4,156 registrations; 3,560 verified parties; and 2,855 replies. The SRB clarified that the replies were collected using a comment form providing the opportunity to comment in nine distinct text boxes. In total, it had collected approximately 23,800 individual non-blank text boxes. After reviewing the comments, the SRB identified 246 unique claims, out of which 147 were not relevant and 99 were relevant. Out of the 99 claims, 41 concerned issues relevant to the SRB and 58 concerned matters to be assessed by the auditing firm. It added that it used many of its staff and hired interim staff to complete these processes.
10. The SRB explained that the auditing firm was still to provide its input. The SRB will then need to analyse this input. It also noted that a potential need to translate the final decision may mean the overall process takes additional time.

**11.** The SRB explained that it plans to gather all the relevant comments together in a final decision and to publish the final decision on its website.

**12.** The SRB concluded that it expects to be in a position to deliver a final decision in the coming months. The SRB also pointed out that it has kept the complainants informed of all relevant developments, through general and individual communications. However, the SRB stated that it would be difficult for it to provide a precise date by when it will finalise the process as it is very conscious of the need to respect the independent role of the auditing firm in this process.

## The Ombudsman's assessment

**13.** Banco Popular was the first case in which a bank was put under resolution through the Single Resolution Mechanism. The resolution of Banco Popular, and the eventual decision regarding compensation, has serious implications for affected creditors and shareholders, many of whom are individual citizens. Given the serious adverse impact on thousands of individuals, how the EU administration is seen to deal with the consequences of this decision is of major importance.

**14.** The Ombudsman's view is that the SRB has made every effort to deal appropriately with the matter and to give effect to the right to be heard of affected creditors and shareholders. The Ombudsman notes that the SRM Regulation, which governs the work of the SRB, does not set out how it should conduct a process allowing affected creditors and shareholders to submit their comments regarding possible compensation. As such, it does not establish any guidance on how this process should take place.

**15.** The Ombudsman appreciates that the ongoing process of assessing whether to compensate affected creditors and shareholders is particularly complex.

**16.** During the inspection meeting, the SRB provided the Ombudsman's inquiry team with a detailed account of the different steps it had taken in relation to this case. It also referred to the complexity of the process and the high number of comments received.

**17.** The Ombudsman notes that the SRB has hired interim staff and used significant internal human resources, from various departments, to ensure a smooth and proper assessment of the comments received. Her review of the file does not suggest inaction on the part of the SRB. The Ombudsman acknowledges that a process of this nature and complexity is inevitably time-consuming. On this basis, the Ombudsman takes the view that the time SRB is taking to assess whether to compensate affected shareholders and creditors is justified by the particular circumstances of the case.

**18.** The Ombudsman acknowledges the great stress and anxiety suffered by the citizens affected by the resolution of Banco Popular. She considers that it is of utmost importance to keep those affected informed throughout the process. It appears from the information provided in the inspection meeting that the SRB has sought to keep those affected informed, at every stage of the process, through general and individual communications. Therefore, the Ombudsman considers that there is no maladministration concerning this aspect of the complaint.

**19.** The Ombudsman encourages the SRB to continue to update its website with a view to keeping those affected regularly informed of the process and by when it expects to have a final decision on compensation.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**There was no maladministration in this case.**

The complainants and the Single Resolution Board will be informed of this decision.

Emily O'Reilly




European Ombudsman

Strasbourg, 03/12/2019

[1] <https://srb.europa.eu/en/node/315>

[2] 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. 1–90.

[3] 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 S.A. have been effected and the launching of the right to be heard process (SRB/EES/2018/132)

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## Documentos relacionados

### Asunto 1015/2019/SRS

El asunto

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### Asunto 1141/2019/SRS

El asunto

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### Asunto 1417/2019/SRS

El asunto

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