



**15 July 2020**

**Case 3/2020**

# **FINAL DECISION**

[.],  
**Appellant,**  
v  
**the Single Resolution Board**

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

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## FINAL DECISION

In Case 3/20

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<sup>1</sup> (the “SRMR”),

[.], with address for service [.] (hereinafter the “Appellant”)

v

**the Single Resolution Board** (hereinafter the “Board” or “SRB”),  
(together referred to as the “Parties”),

### THE APPEAL PANEL,

composed of Christopher Pleister (Chair), Marco Lamandini (Rapporteur), Luis Silva Morais (Vice-Chair), Helen Louri-Dendrinou and Kaarlo Jännäri,

makes the following final decision:

#### **Background of facts**

1. This appeal relates to the SRB decision of 13 May 2020 (hereinafter the “Confirmatory Decision”) rejecting the Appellant’s confirmatory application, by which the SRB was requested by the Appellant to reconsider its position in relation to its initial request and the SRB’s response thereto, concerning the access to documents in accordance with Article 90(1) of SRMR and Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereinafter “Regulation 1049/2001”), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents<sup>3</sup> (hereinafter “Public Access Decision”).
2. By the initial request of 19 December 2019 the Appellant requested access to the following documents: a) documents whereby the SRB and Bloomberg TV agreed to carry out the interview [with the SRB Chair] that was broadcasted live on 23 May 2017 at 9.00; (ii) all communications between both entities related to the realization of this interview; (iii) list of communications between both entities related to the realization of that interview. Moreover,

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<sup>1</sup> OJ L 225, 30.7.2014, p.1.

<sup>2</sup> OJ L 145, 31.5.2001, p. 43

<sup>3</sup> SRB/ES/2017/01.

the Appellant asked whether the questions for the interview were pre-agreed or not and the final date on which the interview was agreed.

3. On 29 January 2020 the Board answered to the request for information stating that “while the SRB in principle does not disclose details of its contacts with the media, on this occasion we can confirm that the interview took place spontaneously and there was no correspondence between the SRB and Bloomberg in advance”.
4. On 29 January 2020 the Appellant repeated, however, the request for access to the documents originally filed on 19 December 2019.
5. With its initial response of 20 February 2020 the Board informed the Appellant that with respect to the documents requested under points (i), (ii) and (iii) of the Appellant’s request for access, the SRB did not hold any documents which would correspond to the description given in the initial request. Thus, the Board informed the Appellant that it was not in the position to handle the request. As to the request for information, the SRB clarified that such request does not constitute a request for access to documents within the meaning of Regulation No 1049/2001 and would not address such request in its initial response.
6. On 20 February 2020 the Appellant submitted a confirmatory application requesting the SRB to reconsider its position.
7. On 13 May 2020 the SRB rejected the confirmatory application with the Confirmatory Decision which is the subject of the appeal in the present case, confirming the reasons already given with the initial response.
8. On 15 May 2020 the Appellant filed an appeal against the Confirmatory Decision. The language of the appeal is Spanish. On 25 May 2020, the Appeal Panel Secretariat asked the Appellant to: i) file appropriate evidence of its identity and ii) to clarify if in front of the Appeal Panel is acting on its own behalf. The Appellant replied on the same day that it is acting on its own behalf and sent copy of the identity card.
9. The notice of appeal was notified by the Appeal Panel Secretariat to the Board on 2 June 2020 and the Board was granted two weeks, in accordance with Article 6(4) of the Rules of Procedure to submit its response.
10. On 10 June 2020 the Board asked for an extension of the deadline to respond to the appeal, in accordance with Article 6(4) of the Rules of Procedure. The extension was granted.
11. On 30 June 2020 the Board submitted its response.

**The SRB’s discovery of a relevant document and its decision not to oppose the appeal**

12. With its response of 29 June 2020, the Board acknowledged that in preparation of the response, another internal search was carried as regards the documents requested by the

Appellant under points (i), (ii) and (iii) and that this search led to the discovery of a document which may be considered as falling within the scope of the initial application, namely an email correspondence between the SRB and Bloomberg TV discussing the scheduling and other technical aspects of the Bloomberg interview.

13. In light of such discovery the Board informed that it does not oppose the appeal within the meaning of Article 6(5) of the Appeal Panel's Rules of Procedure and that the Board will amend the Confirmatory Decision and provide access to the Appellant to the email correspondence, giving notice of such amendment to the Appellant and to the Appeal Panel Secretariat.
14. In light of the above, the Board asks the Appeal Panel to put the appeal in case 3/20 to rest.

### **Findings of the Appeal Panel**

15. The Appeal Panel notes that according to Article 6(5) of its Rules of Procedure "if the Board states that it does not oppose the appeal and, according to the claims of the appellant, withdraws or amends its decision, giving notice of such amendment to the appellant and to the Secretariat, the Appeal Panel may decide that there is no need to adjudicate and put the appeal to rest".
16. Therefore, since the Board did not oppose the appeal and informed that it will amend the Confirmatory Decision adopting an amended confirmatory decision, there is currently no need to adjudicate the matter and case 3/2020 must be closed. Should eventually the Appellant be unsatisfied with the amended confirmatory decision, such amended confirmatory decision may, within the specific limits established by the Appeal Panel in previous decisions, be subject to a new appeal, .
17. As to the other parts of the Confirmatory Decision not directly interested by the discovery of the new documents, the Appeal Panel further recalls that for the documents that the Board informed the Appellant, and now reiterates in the context of the current appeal, that they do not exist or are not in the possession of the SRB, it is settled case-law that the SRB is not obliged to create a document which does not exist (CJEU, judgment of 11 January 2017, *Typke v. Commission*, C-491/15 P, EU:C:2017:5 at para 31) and the Board can rely on a rebuttable presumption that, indeed, the document does not exist (GCEU, judgment 23 April 2018, *Verein Deutsche Sprache v. Commission*, T-468/16, EU:T: 2018:207), provided that this statement is factually accurate.
18. The Appeal Panel further notes that, according to settled case-law and in line with several precedents of the Appeal Panel itself, a request for information does not constitute a request for access to documents within the meaning of Regulation No 1049/2001.

On those grounds, the Appeal Panel, having considered the undertaking of the Board to amend the Confirmatory Decision, hereby decides, in accordance with Article 6(5) of the Rules of Procedure, as follows:

**there is no need to adjudicate in case 3/2020 and the appeal is put to rest.**

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Helen Louri-Dendrinou

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Kaarlo Jännäri

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Luis Silva Morais  
Vice-Chair

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Marco Lamandini  
Rapporteur

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Christopher Pleister  
Chair