



8 March 2023

Case 6/2022

FINAL DECISION

[.],

Appellant,

v

the Single Resolution Board

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

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FINAL DECISION

In Case 6/2022,

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 1093/2010¹ (the “**SRMR**”),

[.] (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), Luis Silva Morais (Vice-Chair and Co-Rapporteur), Marco Lamandini (Co-Rapporteur), Helen Louri-Dendrinou and Kaarlo Jännäri

makes the following final decision:

Background of facts

1. This appeal relates to the SRB decision of 19 August 2022, (hereinafter the “**Contested Decision**”) rejecting the Appellant’s confirmatory application (hereinafter the “**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) SRMR and Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereinafter “**Regulation 1049/2001**”), and the SRB Decision of 9 February 2017 on public access to the Single Resolution Board documents³ (hereinafter “**Public Access Decision**”).
2. By the initial request of 20 April 2022, the Appellant requested access to the confidential versions of: (i) SRB Decision of [.] determining [.] ([.]) as failing or likely to fail (hereinafter the “**SRB Decision [.]**” or “[.]”); (ii) SRB Decision of [.] determining [.] and its subsidiaries in [.] and [.] as failing or likely to fail; (iii) SRB Decision of [.] (hereinafter the “**SRB Decision [.]**” or the “**SRB Resolution Decision**” or “[.]”) and (iv) all relevant documents, which served as a basis for the decisions listed above, including the valuation of [.], the marketing procedure, the ECB failing or likely to fail assessment and other documents

¹ OJ L 225, 30.7.2014, p.1.

² OJ L 145, 31.5.2001, p. 43

³ [.].

showing that the conditions for the resolution action under Regulation (UE) No 806/2014 were met.

3. In its response of 9 June 2022, the SRB granted the Appellant partial access to the [.] as well as to the [.], including access to Valuation 1 and Valuation 2. In this respect, the SRB provided the Appellant with non-confidential versions of these documents and informed the Appellant that access to the entire text of said documents could not be granted. In particular, the SRB considered that the exceptions from disclosure under Article 4(1)(a) fourth indent (*protection of financial, economic or monetary policy of the EU or a Member State*) and Article 4(2), first indent (*protection of commercial interests*) of Regulation 1049/2001 were applicable. The SRB also stated that it had not identified any overriding public interest in the full disclosure of the information falling under the exception provided by Article 4(2) of Regulation 1049/2001. Moreover, the SRB referred to its professional secrecy obligations under Article 88 SRMR. As regards the Appellant's request concerning the SRB decision of 28 February 2022 determining [.] and its subsidiaries in [.] as failing or likely to fail, the SRB identified the SRB's response to the failing or likely to fail (hereinafter, the "**FOLTF**") assessment of the ECB dated 27 February 2022 ([.]) as falling within the scope of the Appellant's request, but informed the Appellant that access to this document could not be granted. In particular, the SRB explained that the exceptions from disclosure under Article 4(1)(a) fourth indent (*protection of financial, economic or monetary policy of the EU or a Member State*), Article 4(2) first indent (*protection of commercial interests*) and Article 4(3) second subparagraph of Regulation No 1049/2001 would be applicable. The SRB also stated that it had not identified any overriding public interest in the full disclosure of the information falling under the exception provided by Article 4(2) and Article 4(3) of Regulation 1049/2001. As regards the Appellant's request concerning all relevant documents, which served as a basis for the decisions listed above, including the valuation of [.], the marketing procedure, the ECB failing or likely to fail assessment and other documents showing that the conditions for the resolution action under Regulation (UE) No 806/2014 were met, the SRB identified the Notary minutes of the process of opening the written offers for the purchase of shares of [.] dated 28 February 2022 (hereinafter the "**Notary Minutes**"), along with certain other documents. In the Initial Response, the SRB informed the Appellant that access to the Notary Minutes could not be granted. In particular, the SRB explained that the exceptions from disclosure under Article 4(1)(a) fourth indent (*protection of financial, economic or monetary policy of the EU or a Member State*) and Article 4(2) first indent (*protection of commercial interests*) of Regulation 1049/2001 applied. The SRB also stated that it had not identified any overriding public interest in the disclosure of the information falling under the exception provided by Article 4(2) first indent of Regulation 1049/2001.
4. On 30 June 2022, the Appellant submitted its Confirmatory Application requesting the SRB to reconsider its position specifically with respect to (1) the confidential (i.e. non redacted) version of the [.] and (2) the Notary Minutes.
5. On 19 August 2022, the SRB adopted the Contested Decision.

6. With the Contested Decision, the SRB informed the Appellant that the Board decided to confirm the position taken in the initial response by reference to the reasons stated therein as supplemented by the reasoning set out in the Contested Decision with the exception of the Notary Minutes, to which partial access was granted. In this context, however, the SRB also explained that full access to the entire text of the Notary Minutes could not be granted since the exceptions from disclosure under Article 4(1)(b) fourth indent (*privacy and integrity of the individuals*) and Article 4(2) first indent (*protection of commercial interests*) of Regulation 1049/2001 applied in connection with specific parts thereof. Moreover, the SRB further identified as a relevant document for the Appellant's request the updated bid from [.]. (hereinafter the "[.]") and provided partial access thereto. The SRB informed, however, the Appellant that full access to the entire text of the [.] could not be granted. The SRB explained that the considerations made in connection with the Notary Minutes applied equally in connection with the [.]. In addition, the SRB provided with the Contested Decision additional reasons to justify its refusal to grant access to the "*confidential (i.e. non-redacted) version*" of the [.] in response to the arguments raised by the Appellant with the Confirmatory Application. In particular, the SRB recalled its obligation under Article 88(5) SRMR to ensure the protection of confidential information and explained that the non-confidential version of the [.] was sufficient to clarify and disclose the reasoning of the SRB and its methodology. Finally, the SRB made with the Contested Decision some additional remarks in connection with other documents identified in the initial response, to update the Appellant about the public availability of said documents or of non-confidential versions thereof and to complement the reasoning included in the initial response.
7. On 30 September 2022, the Appellant filed the notice of appeal.
8. The Chair appointed as co-rapporteurs the Vice-Chair Professor Luis Morais da Silva and the member Professor Marco Lamandini and the notice of appeal was notified by the Secretariat to the Board on 3 October 2022.
9. On 7 October 2022, the Board submitted a reasoned request for an extension of the deadline for the filing of its response to the notice of appeal by six weeks, which was granted by the Appeal Panel of four weeks, namely until 14 November 2022.
10. On 9 November 2022, the Appeal Panel notified to the Parties the following procedural order:

To the parties of case 6/2022,

The Appeal Panel has determined that, for the just determination of the appeal in case 6/2022 it is necessary for the Appeal Panel to examine, under strict confidentiality vis-à-vis the Appellant:

(1) the confidential version of the SRB decision [.] of [.];

(2) the confidential version of the Notary Minutes concerning the opening of the written offers for the purchase of shares of [.] [.] and [.].

For this purpose, as a measure of inquiry weighing confidentiality against the right to an effective legal remedy at this stage of the proceedings, having regard also to Article 104 of the General

*Court's Rules of Procedure, the Appeal Panel orders the Board to deposit with the Secretariat of the Appeal Panel by **the close of business of Monday, 21 November 2022** at the SRB premises, one or more numbered hardcopies of the above documents and subject to the adoption of appropriate technical means and all necessary security measures, to allow remote access to the Appeal Panel Members via electronic devices to an electronic copy of the same for reading only. Having regard also to Article 104 of the General Court's Rules of Procedure, the above documents deposited by one party shall neither be communicated to the other party nor shall be part of the file of these proceedings open to the access of the Appellant or of any third party, corresponding exclusively to a mere element intended for comprehensive information and due diligence on the case on the part of the Appeal Panel.*

11. On 11 November 2022, the Board submitted its response to the appeal.
12. On 21 November 2022, the Board deposited the documents requested by the Appeal Panel with the procedural order of 9 November 2022.
13. On 25 November 2022, the Appellant submitted its rejoinder to the Board's response.
14. On 6 December 2022, the Appeal Panel invited both parties to inform the Appeal Panel if they wished to discuss orally the case at a hearing to be held in Brussels or they waived their right to the hearing. The Appellant confirmed its intention to discuss orally the case at a hearing.
15. On 13 December 2022, the Secretariat of the Appeal Panel informed the parties that the hearing would be held in Brussels on 16 January 2023.
16. On 20 December 2022, the Board submitted its reply to the Appellant's rejoinder.
17. On 16 January 2023, the hearing was held in Brussels. Both parties appeared (the Appellant represented by a new counsel) and presented oral arguments. Both parties 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.
18. On 17 January 2023, the Appeal Panel, in light of the discussion at the hearing and also considering that the Appellant had appointed in the course of the proceedings and shortly before the hearing a new counsel, invited both parties to deposit with the Appeal Panel's Secretariat by the close of 20 January 2023 the written text of their pleadings at the hearing and further invited the Appellant to deposit [.]. The Appeal Panel also granted the Board the possibility to submit written observations limited to such new documents, their context and their relevance for the present appeal by the close of business of 27 January 2023.
19. On 19 January 2023, the Board submitted the written text of its pleadings at the hearing.
20. On 19 January 2023, the Appellant filed a request of an extension of the deadline for submitting the written text of its pleadings and the additional documents pertaining to [.] opinions. The extension was granted by the Appeal Panel until 23 January 2023, then postponed to 30 January 2023.

21. On 23 January 2023, the Appellant submitted the written text of its pleadings and additional documents pertaining to [.].
22. On 26 January 2023, the Board filed a request for an extension of three weeks, namely until 20 February 2023, of the deadline of 30 January 2023 to submit its observations to the documents filed by the Appellant on 23 January 2023. The Appeal Panel granted an extension of two weeks, until 13 February 2023.
23. On 13 February 2023, the Board submitted its observations to the documents filed by the Appellant on 23 January 2023.
24. On 21 February 2023, the Appeal Panel notified the parties that the Chair considered that the evidence was complete and thus that the appeal had been lodged for the purposes of Article 85(4) of Regulation 806/2014 and 20 of the Rules of Procedure.

Main arguments of the parties

25. The main arguments of the parties are briefly summarised below. 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

26. The Appellant in the written stage of the procedure has argued, first, that, in its position of (former) shareholder of [.], it should be allowed access to the confidential version of the [.], the Notary Minutes as well as other documents regarding the resolution of [.].
27. Second, that the SRB's refusal to communicate to it the confidential version of the [.], the Notary Minutes (as well as other documents regarding the resolution of [.]) constitutes an infringement of its right to be heard, its right to access to the file and of the SRB's duty to state reasons (Articles 41(2)(a) and (c) and 42 of the Charter of Fundamental Rights of the European Union because its rights as former shareholder of [.] were negatively affected by the resolution.
28. Third, that it requires access to the full version of the [.], the Notary Minutes (as well as other documents regarding the resolution of [.]) for the purposes of legal proceedings and that "*withholding these texts on grounds of confidentiality [i.e. Article 88 SRMR] is [...] in breach of the Appellant's right to exercise its right to an effective judicial remedy and other fundamental rights*".
29. Fourth, the Appellant argues that the Board's refusal to communicate to it the "*confidential (i.e. non-redacted) version*" of the [.], the Notary Minutes (as well as other documents regarding the resolution of [.]) is wrongfully substantiated on the basis of the Regulation No 1049/2001 and the Public Access Decision.

30. The Appellant asks therefore the Appeal Panel to set aside the Contested Decision and remit the case to the Board.
31. In its rejoinder, the Appellant has reiterated the pleas raised with the notice of appeal and has replied in detail to the arguments raised by the Board in its response, both on admissibility and on the merits.
32. At the hearing the new counsel of the Appellant has argued, first, that the Appellant is not requesting a review by the Appeal Panel of a decision of the SRB denying access to the file, because there is not such a decision. The Appellant is requesting instead that, in the context of these proceedings before the Appeal Panel, which are of administrative nature, the Appellant is entitled to access to the file pursuant to Article 41 of the Charter on Fundamental Rights. And in this connection the Appellant further asked pursuant to Article 16(1) of the Appeal Panel's Rules of Procedure that the Board produced not only to the Appeal Panel, but also to the Appellant unredacted versions of all of the documents in connection with the present resolution case and that, if the SRB fails to do so, the Appeal Panel gives directions for the production of such documents.
33. In second place, the Appellant contests the validity of the grounds submitted by the Board for denying full access to the requested documents.
34. As to the need to protect financial, economic or monetary policy, the Appellant argues that the Board's argument that disclosure would cause unfounded speculations about the way the SRB may act in the future is without merit and the Appellant argues that, quite on the contrary, predictability of regulatory action is desirable and has positive and stabilising effects. In the Appellant's view, the Board's explanations for its refusal to fully disclose the documents suggest that the Board does not accept transparency, external scrutiny and public debate. The Appellant further argues that policy-based grounds need to be used cautiously because they are grounds for which also an overriding public interest to disclosure is irrelevant, whilst in the Appellant's view, "the SRB appears to use this as a place-holder for any interest which may appear legitimate and therefore deprives the concept of any meaning".
35. As to the need to protect commercial interests the Appellant argues that the ground is too abstract, because the Board does not even say whose commercial interests need to be protected, what stance was adopted by such unspecified third party and why specifically the redacted parts would adversely affect those unspecified commercial interests.
36. As to the confidentiality obligations of the individual officials, the Appellant argues that the argument is erroneous, because "the officials obviously need to treat everything confidential which the SRB does not disclose; if, however, the SRB could not disclose anything which its officials have to treat as confidential, then it could never disclose anything". The Appellant notes that "this is also why the *Baumeister* ruling of the Court of Justice confirms that the professional duties as such do not constitute a ground for withholding documents and it needs to be demonstrated that specific harm will be caused by a potential disclosure".

Board

37. The Board preliminarily argues that the appeal is inadmissible for two reasons. First, in the notice of appeal, the Appellant, according to the Board, seems to challenge also the legality of the [.] and of the [.], and not the Contested Decision. However, pursuant to Articles 85(3) and 90(3) SRMR, the competence of the Appeal Panel is limited to the review of the legality of the decision of the Board rejecting, fully or partially, a request for public access to documents under Regulation 1049/2001. Second, in the Board's view, the remedy requested by the Appellant is beyond the scope of Article 85(8) SRMR, because the Appellant requests "that the Appeal Panel sets aside the Confirmatory Decision and remits the case back to the SRB Board for an amendment with the instruction that the Appellant be allowed full access to documents, denied by the Confirmatory Response". However, pursuant to Article 85(8) SRMR, the Appeal Panel cannot set aside the Contested Decision and cannot, in the Board's view, allow full access to the required documents.
38. As to the merits of the appeal, the Board argues that, in the first place, the fact that the Appellant was a former shareholder of [.] is irrelevant for the purposes of the analysis of the legality of the Contested Decision.
39. In second place, that the allegations regarding potential infringements of the Appellant's right to be heard, access to the file and the duty to state reasons are either inadmissible in the context of the current proceedings or irrelevant.
40. In third place, that the Board was not obliged to provide the Appellant full access to the [.] (or other documents regarding the resolution of [.]).
41. In fourth place, that the Board properly applied the provisions of Regulation 1049/2001 and the Public Access Decision. As to this latter aspect, the Board argues that, first, access to the "confidential (i.e. non-redacted) version" of the [.] cannot be granted since this is prevented by the combination of Article 4(1)(a) fourth indent (*protection of financial, economic or monetary policy of the EU or a Member State*) and Article 4(2) first indent (*protection of commercial interests*) of Regulation No 1049/2001. Moreover, in relation to Article 4(2) first indent, there is no overriding public interest in the disclosure of this document. Second, access to the "confidential (i.e. non-redacted) version" of the Notary Minutes and the [.] updated cannot be granted since this is prevented by the combination of Article 4(1)(b) of Regulation No 1049/2001 (*privacy and integrity of the individuals*) and Article 4(2), first indent (*protection of commercial interests*) of Regulation No 1049/2001. Moreover, in relation to Article 4(2) first indent, there is similarly no overriding public interest in the disclosure of these documents.
42. The Board further elaborates in detail the reasons why the request for full disclosure could not be granted in connection with Article 4(1)(a) fourth indent (*protection of financial, economic or monetary policy of the EU or a Member State*) of Regulation No 1049/2001, noting that the redacted parts contain data, considerations and assessments concerning [.] financial

situation and resolvability, as well as sensitive market information at the moment of adoption of the [.]. Such information forms part of the SRB's policy (including the methodology and internal preparation) for the resolution of credit institutions. Disclosing the details of the methodology applied in this particular case might give rise to unfounded speculations about the way in which the SRB might conduct future assessments, which by their nature are context-specific and not easily transposable to other financial institutions. Such speculations may in turn unduly influence the behavior of other institutions and thereby lead to negative consequences for banks with a similar business model and create a risk to financial stability. Hence, there exists a tangible risk that the disclosure of certain limited parts of the [.] could give rise to adverse market reactions and would therefore undermine the public interest as regards the financial and economic policy of the Union. This, in turn, could hinder the SRB's ability to fulfil its role as resolution authority in the future.

43. The Board argues, in connection with Article 4(2) first indent (*protection of commercial interests*) of Regulation No 1049/2001, that [.] is a credit institution operating independently from its former shareholder (i.e., the Appellant). Furthermore, all shares issued by [.] were transferred to [.] following the [.]. Therefore, the commercial interests of [.] need be considered separately from the Appellant's commercial interests and protected accordingly. Therefore, the Appellant's argument that "the only commercial interests in the case at hand would be the ones of the Appellant" is unfounded. Following a detailed assessment, the Board has redacted certain limited parts of the [.] based on this exception. The redacted parts contain commercially sensitive information such as financial data, business information or the entity's particular position in the market as well as information relating to the participation in the marketing process. Moreover, the Board has also redacted certain parts of the Notary Minutes and the [.] based on this exception. The redacted parts contain commercially sensitive information reflecting the strategic and commercial decision (and related business information, considerations and financial data) of institutions involved in the marketing procedure conducted by [.].
44. In connection with Article 4(1)(b) of Regulation No 1049/2001 (privacy and integrity of the individuals), the Board argues that pursuant to Article 8(b) of the Data Protection Regulation, the SRB can only transmit personal data to a recipient subject to Directive 95/46/EC "if the recipient establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced". Those two conditions are cumulative. Thus, only if both conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation 45/2001, personal data may be transferred. To the extent that it has not been demonstrated that the above conditions are fulfilled, the SRB has redacted certain parts of the Notary Minutes and the [.] containing personal data (such as names, e-mail addresses, telephones and signatures) based on this exception.
45. The Board concludes for the dismissal of the appeal.
46. With its reply to the Appellant's rejoinder, the Board has further reiterated and specified its arguments in response to the Appellant's claims and has replied in detail to the arguments

raised by the Appellant in its rejoinder, insisting that the Appeal Panel dismiss the appeal as partly inadmissible and for the remainder as unfounded, or in the alternative as fully unfounded.

47. At the hearing, the Board insisted on two main points. First, that the fact that the Appellant is a former shareholder of [.] is not relevant for the purpose of the appeal. In this connection, the Board argues that also the right of access to the file is irrelevant. Second, that the Contested Decision is in accordance with the relevant legal framework and contains a sufficient statement of reasons. Indeed, in the Board's view, the statement of reasons of the Contested Decision disclosed clearly and unequivocally the reasoning of the SRB's refusal to provide full access to the documents and its sufficiency must be considered in the context in which the measure is adopted. In this connection, the Board notes that in the Confirmatory Application the Appellant did not dispute that the redacted parts were confidential and covered by the exceptions provided for in Regulation 1049/2001 but only argued that he was entitled to full access to those documents in its condition as shareholder.
48. With its authorised post-hearing submissions in response to the new documents submitted by the Appellant on 23 January 2023, the Board argued, first, that part of the documents submitted by the Appellant are beyond the scope of the Appeal Panel's authorisation and, second, analysed each of the documents submitted by the Appellant to show that those documents are irrelevant for the just determination of the appeal.

Findings of the Appeal Panel

49. The Appeal Panel preliminarily notes that in previous decisions concerning public access to documents the Appeal Panel stated the overriding principles that must guide in the determination of appeals concerning the SRB refusal to grant access to documents under Regulation 1049/2001 in the context of a bank resolution as follows:
 - (a) The right of access is a transparency tool of democratic control of the European institutions, bodies and agencies and is available to all EU citizens irrespective of their interests in subsequent legal actions (see for instance judgment 13 July 2017, *Saint-Gobain Glass Deutschland*, C-60/15, ECLI:EU:C:2017:540, paragraphs 60 and 61 and in particular judgment 4 June 2015, *Versorgungswerk der Zahnärztekammer Schleswig-Holstein v. European Central Bank*, T-376/13, ECLI:EU:T:2015:361, paragraph 20: "as the addressee of those decisions [denying access to documents], the applicant is therefore entitled to bring an action against them. (...)").
 - (b) As indicated by Article 85(3) SRMR, the Appeal Panel has no competence to hear appeals against a decision of the Board referred to in Article 90(4) SRMR. The Appellant can therefore not rely, at least in an appeal before the Appeal Panel, on the right to access the SRB's file on the basis of Article 90(4) SRMR. The Appeal Panel must therefore determine if the Appellant is entitled to access the requested documents, in whole or in

part, having regard solely to Regulation 1049/2001 and to the Public Access Decision. As to the Public Access Decision, the Appeal Panel notes that it implements Regulation 1049/2001 by adopting “practical measures” to this aim and must therefore be interpreted and applied so as to ensure its full consistency with Regulation 1049/2001. The Appeal Panel further noted that, although the regime of Article 90(4) SRMR is not relevant to the effect of the present appeal, Regulation 1049/2001 and the Public Access Decision must be interpreted taking into account also the special limitations set out in Article 90(4) SRMR in such a manner that they do not make each other devoid of purpose (this means that Regulation 1049/2001 and the Public Access Decision cannot grant access to documents for which access is expressly excluded by Article 90(4) SRMR).

- (c) According to Regulation 1049/2001 “the purpose of [the] Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access” (recital 4) and “in principle, all documents of the institutions should be accessible to the public” (recital 11). Regulation 1049/2001 implements Article 15 TFEU which establishes that citizens have the right to access documents held by all Union institutions, bodies and agencies (such right is also recognized as a fundamental right by Article 42 of the Charter of Fundamental Rights). However, certain public and private interests are also protected by way of exceptions and the Union institutions, bodies and agencies should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks (recital 11). Article 4 of Regulation 1049/2001 sets out these exceptions as follows:

Article 4

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if

disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

- (d) In principle, exceptions must be applied and interpreted narrowly (see e.g., judgment 17 October 2013, *Council v. Access Info Europe*, C-280/11, ECLI:EU:C:2013:671, paragraph 30). However, case-law on public access to documents in the administrative context (as opposed to case-law on public access in the legislative context) suggests that a less open stance can be taken in the administrative context because “the administrative activity of the Commission does not require as extensive an access to documents as that concerning the legislative activity of a Union institution” (see to this effect judgment 4 May 2017, *MyTravel v. Commission*, T-403/15, ECLI:EU:T:2017:300, at paragraph 49; judgment 21 July 2011, *Sweden v. Commission* C-506/08 P, ECLI:EU:C:2011:496, at paragraphs 87-88; judgment 29 June 2010, *Commission v. Technische Glaswerke Ilmenau*, C-139/07 P, ECLI:EU:C:2010:376, paragraphs 60-61).
- (e) Settled case-law permits Union institutions, bodies and agencies to rely in relation to certain categories of administrative documents (in state aid, mergers, cartels, infringement and court proceedings) on a general presumption that their disclosure would undermine the purpose of the protection of an interest protected by Regulation 1049/2001 (see to this effect judgment 28 June 2012, *Commission v. Edition Odile Jacob*, C-404/10, ECLI:EU:C:2012:393; judgment 21 September 2010, *Sweden and Others v. API and Commission*, C-514/07 P, ECLI:EU:C:2010:541; judgment 27 February 2014, *Commission v. EnBW*, C-365/12 P, ECLI:EU:C:2014:112; judgment 14 November 2013, *LPN and Finland v. Commission*, C-514/11 P and C-605/11 P ECLI:EU:C:2013:738; judgment 11 May 2017, *Sweden v. Commission*, C-562/14 P ECLI:EU:C:2017:356). Where the general presumption applies, the burden of proof is shifted from the institution to the applicant, who must be able to demonstrate that there will be no harm to the interest protected by the Regulation 1049/2001. This also means that the Union institutions, bodies or agencies are not required, when the general presumption applies, to examine individually each document requested in the case because, as the CJEU noted in *LPN and Finland v. Commission*, Joined Cases C-514/11P and C-605/11P (cited above, paragraph 68), “such a requirement would deprive that general presumption of its proper effect, which is to permit the Commission to reply to a global request for access in a manner equally global”. At the same time, though, settled case-law clarifies that, since the possibility of relying on general presumptions applying to certain categories of

documents, instead of examining each document individually and specifically before refusing access to it, would restrict the general principle of transparency laid down in Article 11 TEU, Article 15 TFEU and Regulation 1049/2001, “the use of such presumptions must be founded on reasonable and convincing grounds” (judgment 25 September 2014, *Spirlea v. Commission*, T-306/12, ECLI:EU:T:2014:816, paragraph 52).

- (f) When determining whether disclosure is prevented by the application of one of the relevant exceptions under Regulation 1049/2001, EU institutions, bodies and agencies enjoy in principle a margin of appreciation. Review is then limited, according to settled case-law, to verifying whether procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers (see, among others, judgment 4 June 2015, *Versorgungswerk der Zahnärztekammer Schleswig-Holstein v. European Central Bank*, T-376/13, ECLI:EU:T:2015:361, paragraph 53; judgment 29 November 2012, *Thesing and Bloomberg Finance v ECB*, T-590/10, ECLI:EU:T:2012:635, paragraph 43), and provided that the actual viability of judicial review in respect of decisions is ensured (see to this effect in light of judgment 22 January 2014, *United Kingdom v Parliament and Council*, C-270/12, ECLI:EU:C:2014:18, at paragraphs 79-81).

50. Having in mind these principles and precedent hereby re-stated, the Appeal Panel has carefully examined the pleas raised by the Appellant and the arguments of the Board in response and the documents for which the Appeal Panel has requested confidential disclosure in the present proceedings and has come to the following conclusions.

(a) Admissibility of the appeal.

51. The Board claims that the appeal is inadmissible for several reasons. In first place, the Board claims that the Appellant seems to challenge the legality of the [.], to which the Appellant has requested public access, and not of the Contested Decision, in breach of Articles 85(3) and 90(3) SRMR. The Appeal Panel notes, however, that, the appeal is unambiguously directed at challenging the Contested Decision as a response to the rejection of the Confirmatory Application.
52. The Board claims, in second place, that the remedies requested by the Appellant are not provided for in Article 85(8) SRMR because in the notice of appeal, the Appellant had requested the Appeal Panel to “*set aside the Confirmatory Decision and remits the case back to the SRB Board for an amendment with the instruction that the Appellant be allowed full access to documents denied by the Confirmatory Decision*”. The Board argues that pursuant to Article 85(8) SRMR, “[t]he Appeal Panel may confirm the decision taken by the Board or remit the case to the latter”. The Appeal Panel notes that, although the expressions used in the notice of appeal by the Appellant could be more rigorous, technically speaking, the substantive meaning of the appeal and its consequent procedural implications are clear, and need to be interpreted as a challenge to the Contested Decision, requesting the Appeal Panel to find that the redactions in the requested documents are not justified under Regulation

1049/2001, and thus that the Appeal Panel should remit the case to the Board. The Appeal Panel considers therefore, that, within these limits, the appeal is admissible.

(b) The first plea of the appeal

53. The quite broad nature of the pleas originally raised by the Appellant with the notice of appeal meant that the grounds were technically further clarified and specified in the course of the proceeding with the reply and at the hearing. In first place, the Appellant argues that as sole shareholder of [.] it should be allowed full access to the entire confidential version of the [.] and of the Notary Minutes and that the SRB's refusal to allow it constitutes an infringement of its right to be heard, its right to access the file and of the SRB's duty to state reasons pursuant to Articles 41(2)(a) and (c) and 42 of the Charter of Fundamental Rights of the European Union.
54. At the hearing, the new counsel of the Appellant specified that the Appellant is not requesting a review by the Appeal Panel of a decision of the SRB denying access to the file, because there is not such a decision. The Appellant is requesting instead that, in the context of the proceedings before the Appeal Panel, which are of administrative nature, the Appellant is entitled to access to the file pursuant to Article 41 of the Charter on Fundamental Rights. And in this connection the Appellant has further asked pursuant to Article 16(1) of the Appeal Panel's Rules of Procedure that the SRB produces not only to the Appeal Panel, but also to the Appellant unredacted versions of all of the documents in connection with [.] resolution and that, if the SRB fails to do so, the Appeal Panel gives directions for the production of such documents.
55. The Appeal Panel recalls that, as noted above, pursuant to Article 85(3) SRMR the Appeal Panel has no competence to hear appeals against a decision of the Board referred to in Article 90(4) SRMR and therefore cannot confirm or remit an SRB decision which denies access to the file. The first plea originally raised by the Appellant, claiming that as sole shareholder of [.] it should be allowed access to the confidential version of the [.] and to the Notary Minutes and that the SRB's refusal to allow it constitutes an infringement of its right to access the file is therefore inadmissible, because it is beyond the remit of the Appeal Panel.
56. At the hearing, however, the Appellant clarified for all relevant legal purposes concerning the present proceedings that the Appellant is not challenging a decision denying access to the file but is rather requesting, in the context of this proceeding before the Appeal Panel to have access to the file pursuant to Article 41 of the Charter on Fundamental Rights.
57. The Appeal Panel, however, sides on this point with the Board, which noted with its authorized observations of 13 February 2023 that the current appeal relates to requests for public access to documents, and not decisions concerning resolution. The file of the administrative proceedings before the Appeal Panel includes therefore only the documents submitted by both parties, which had unrestricted access to such documents. In addition, the Appeal Panel ordered the Board with its procedural order of 9 November 2022 to deposit with

the Appeal Panel's Secretariat, *yet under strict confidentiality vis-à-vis the Appellant*: (1) the confidential version of the [.] and (2) the confidential version of the Notary Minutes and of the [.]. This procedural order was issued as a measure of inquiry, specifying that the above documents should neither be communicated to the Appellant *nor should be part of the file* of the proceedings open to the access of the Appellant or of any third party, corresponding exclusively to a mere element intended for comprehensive information and due diligence on the case on the part of the Appeal Panel.

58. The Appeal Panel notes that the current appeal concerns a request for access to documents pursuant to Regulation 1049/2001 and not the merit of the resolution action taken by the Board in respect to [.]. Thus, there is no reason to order the Board, pursuant to Article 16(1) of the Appeal Panel's Rules of Procedure, to produce unredacted versions of all of the documents in connection with [.] resolution.
59. As to the documents deposited by the Board in compliance with the procedural order of 8 November 2022, the Appeal Panel finds that, in the context of the review of decisions regarding requests for public access to documents, the Appellant cannot be granted access to such documents as deposited because this would be tantamount as accepting the circumvention of the rules regarding public access to documents. If an Appellant could get access, in the course of the proceedings before the Appeal Panel to the confidential version of the documents to which it has requested public access before a decision on the legality of the Contested Decision concerning the redactions or denial of disclosure made by the Board is taken by the Appeal Panel, the Appeal Panel's decision concerning the Contested Decision (which is a confirmatory decision under Regulation 1049/2001) would be made irrelevant and devoid of purpose. Indeed, the Appellant would have already obtained access to the document(s) whose redactions or refusal to disclose the Appellant challenged, and this would occur irrespective of the final determination of the Appeal Panel to confirm or remit the case to the Board with regard to the Contested Decision.
60. Based upon the foregoing, the first plea of the Appellant is therefore dismissed.

(c) The second plea of the appeal

61. The second plea, as originally formulated by the Appellant in the notice appeal, was not entirely precise, technically speaking, although it was clear from the outset that it was a challenge against the Contested Decision for having denied full public access to the text of the [.], the Notary Minutes and the [.] (these being the documents whose full disclosure was requested with the Confirmatory Application and was denied by the Contested Decision). In this respect the Appellant raises several arguments, and in particular that the Contested Decision infringes its right to be heard and the SRB's duty to state reasons, that Article 88 SRMR cannot be validly relied upon by the Board to deny access to the requested documents because the Appellant is seeking full access to them for the purposes of legal proceedings and thus to exercise its fundamental right to an effective judicial protection and because the Contested Decision is wrongly substantiated on the basis of Regulation 1049/2001 and the

Public Access Decision. All these claims, in the Appeal Panel's view, need to be considered together as an articulated second ground of appeal, which was clarified and specified in the course of the proceedings, notably with the Appellant's reply and at the hearing.

62. As to the applicability in this context, as claimed by the Board, of the confidentiality obligations under Article 88 SRMR which, in the Board's view, would prevent it from disclosing any resolution-related information that is not publicly available, the Appeal Panel wishes to recall that, with its decision in case 1/2021, the Appeal Panel held that, in its view, the judgment of 19 June 2018, *BaFin v Ewald Baumeister*, C-15/16, ECLI:EU:C:2018:464 clarified that Article 54(1) of Directive 2004/39 (functionally corresponding to Article 88 SRMR), must be interpreted as meaning that all information relating to a supervised entity and communicated by it to the competent authority, and all statements of that authority in its supervision files, including its correspondence with other bodies, do not constitute, unconditionally, confidential information that is covered by the obligation to maintain the professional secrecy laid down in that provision. The Court held indeed that only information held by the competent authorities (i) which is not public and (ii) the disclosure of which is likely to affect adversely the interest of the natural or legal person who provided that information or of third parties, or the proper functioning of the system for monitoring the activities of supervised entities is to be so classified. The Court further acknowledged that the passage of time is a circumstance that is normally liable to have an influence on the analysis of whether the conditions governing the confidentiality of the information concerned are satisfied at a given point in time.
63. In its decision in case 1/2021, the Appeal Panel further held that the principle that the obligation to maintain professional secrecy cannot prevent competent authorities from disclosing confidential information not concerning third parties to persons directly concerned by the bankruptcy or compulsory liquidation of the credit institution was analysed in the judgment of 13 September 2018, *Enzo Buccioni v Banca d'Italia*, C-594/16, ECLI:EU:C:2018:717. Deferring to the legal reasoning of the Court, the Appeal Panel noted that the Court held that, in principle, the disclosure of confidential information pertaining to the supervisory file is allowed to persons directly affected by the insolvency and that this right is not limited to disclosures made in the context of civil or commercial proceedings which have been already initiated, because "the needs of the proper administration of justice would be undermined if the applicant were obliged to bring civil or commercial proceedings in order to obtain access" to such confidential information. The Court concluded therefore, in paragraph 38, that supervisory authorities can exclude the obligation of professional secrecy under Directive 2013/36 when the request for disclosure relates to information in respect of which the applicant puts forward precise and consistent evidence suggesting that it is relevant for the purposes of civil or commercial proceedings which are under way or to be initiated.
64. This shows, in the Appeal Panel's view, that the claim of the Board that Article 88 SRMR would prevent it from disclosing in whole or in part the redacted parts of the [.] and of the Notary Minutes cannot be upheld.

65. The Appeal Panel needs therefore to assess, having examined under confidentiality the [.], the Notary Minutes and the [.] and having carefully weighted the content of the redactions made by the Board against the reasons given by Board in the Contested Decision (which also refer to the reasons stated in the initial response), whether and to what extent in the given circumstances the statement of reasons of the Contested Decision is sufficient and the claimed exceptions to disclosure pursuant to Article 4(1)(a)fourth indent, Article 4(2) and Article 4(1)(b) of Regulation 1049/2001 relied on by the Board are justified.
66. The Appeal Panel recalls, in first place, that the statement of reasons is one of the key elements in the assessment of cases on public access to documents. According to the European courts, the statement of reasons “must be appropriate to the measure at issue and must disclose clearly and unequivocally the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent Court of the European Union to exercise its jurisdiction to review legality” (judgment of 29 September 2011, *Elf Aquitaine v Commission*, C-521/09 P, ECLI:EU:C:2011:620, paragraph 147 and the case-law cited).
67. In particular, according to the case-law, it is “for the institution which has refused access to a document to provide a statement of reasons from which it is possible to understand and ascertain, first, whether the document requested does in fact fall within the sphere covered by the exception relied on and, secondly, whether the need for protection relating to that exception is genuine (judgment of 26 March 2020, *Bonafous v Commission*, T-646/18, ECLI:EU:T:2020:120, paragraph 24; judgment of 4 May 2012, In ‘t Veld v Council, T-529/09, ECLI:EU:T:2012:215, paragraph 118 and the case-law cited).
68. This is in line with other case-law, whereby European courts clearly held that the EU institution, body, office or agency refusing to grant access on the basis of one of the exceptions laid down in Article 4 of Regulation No 1049/2001, must, in principle, explain how access to that document could specifically and actually undermine the interest protected by that exception, and the risk of that undermining must be reasonably foreseeable and not purely hypothetical (judgments of 4 September 2018, *ClientEarth v Commission*, C-57/16 P, ECLI:EU:C:2018:660, paragraph 51, and judgments of 22 March 2018, *De Capitani v Parliament*, T-540/15, ECLI:EU:T:2018:167, paragraphs 63 to 65, and of 25 January 2023, *De Capitani v Council*, T-163/21, ECLI:EU:T:2023:15, paragraph 69).
69. The Appeal Panel also recalls that, pursuant to Article 4(6) of Regulation 1049/2001, “if only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released”. This provision also applies to determine the explanatory burden of proof that the party refusing disclosure must meet to justify such refusal (see, e.g., judgment of 29 October 2020, *Intercept Pharma Ltd and Intercept Pharmaceuticals, Inc. v European Medicines Agency*, C-576/19 P, ECLI:EU:C:2020:873, paragraphs 53-56; judgment of 22 January 2020, *MSD Animal Health Innovation GmbH and Intervet International BV v European Medicines Agency*, C-178/18 P, ECLI:EU:C:2020:24, paragraphs 77-82).

70. In this regard, European courts have found that the institutions must assess precisely the contents of the documents, and offer specific reasons to determine which *parts* of the documents may be disclosed or not. Consistently, institutions have been considered to have acted lawfully in cases where they had granted access to some parts of the documents, and had properly and specifically justified the refusal of access to other parts (judgment of 19 December 2019, European Central Bank (ECB) v Espirito Santo Financial, C-442/18 P, ECLI:EU:C:2019:1117, paragraphs 12, 47, 55, 56; judgment of 10 September 2008, Rhiannon Williams v Commission of the European Communities, case T-42/05, ECLI:EU:T:2008:325, paragraph 125).
71. In the second place, the Appeal Panel recalls that, when the Board relies on one or another of the relevant exceptions under Regulation 1049/2001, the Board enjoys a margin of appreciation to the extent that the relevant exception is based on broad or relatively undetermined legal concepts, such as “protection of financial, economic and monetary policy” pursuant to Article 4(1)(a) fourth indent of Regulation 1049/2001 or “protection of commercial interests” pursuant to Article 4(2) first indent. In this context, the applicable legal framework does not grant to the authority discretion proper, or “policy discretion”, in the taxonomy recently proposed by Advocate General Emiliou in his Opinion in *Crédit Lyonnais* (Opinion of 27 October 2022, European Central Bank v Crédit Lyonnais, C-389/21 P, ECLI:EU:C:2022:844 paras 47-48), yet it entails, due to the open-texture nature of the relevant provisions, a margin of appreciation (“technical discretion” due to relatively undetermined legal concepts, in the above-mentioned taxonomy).
72. Review is then limited, according to settled case-law, to verifying whether procedural rules and the duty to state reasons have been complied with, whether the facts have been accurately stated and whether there has been a manifest error of assessment or a misuse of powers (see, among others, judgment 4 June 2015, *Versorgungswerk der Zahnärztekammer Schleswig-Holstein v. European Central Bank*, T-376/13, ECLI:EU:T:2015:361, paragraph 53; judgment 29 November 2012, *Thesing and Bloomberg Finance v ECB*, T-590/10, ECLI:EU:T:2012:635, paragraph 43).
73. The Appeal Panel wishes, however, to further clarify that the margin of appreciation of the Board is less pronounced whenever the Board relies, as it did to some extent also in the Contested Decision, on the exception of Article 4(1)(b) of Regulation 1049/2001 on the protection of the privacy and integrity of the individuals. The Appeal Panel naturally acknowledges that names and other personal data need to be redacted. However, the definition of “personal data”, in the Appeal Panel’s view, is not broad nor an undetermined legal concept. Article 3 (1) of Regulation 2018/1725 states that:

“ ‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;” (emphasis added)

74. The exception of personal data was analysed by the Court of Justice in its judgment of 16 July 2015, *ClientEarth ad PAN Europe v EFSA and Commission*, C-615/13 P, ECLI:EU:C:2015:489. In that case, a number of external experts had made comments to a draft guidance document, and the European Food and Safety Authority (EFSA) granted access to the comments but redacted the names of the experts. The appellants sought disclosure of these, in order to know, with respect to each of the comments made by the external experts, which one of those experts was the author, and the General Court, and the Court of Justice, considered that the exception based on personal data applied “in so far as that information would make it possible to connect to one particular expert or another a particular comment, it concerns identified natural persons” (*ClientEarth*, at paragraph 29).
75. The Appeal Panel considers therefore that the protection of privacy and personal data may, in principle, justify the redaction of names and similar identifiers in the relevant documents or parts of the documents which contain information which would make it possible to connect such information to an identified person, but cannot justify any redactions beyond that. Since the Board, in its response, clarified at §§ 69-71 that the redacted information based upon the exception of Article 4(1)(b) of Regulation 1049/2001 is limited to the personal details of the public officers who took part in the opening of the bids, to the personal data of individuals participating in the marketing process and to personal data of employees of the buyer, the Appeal Panel finds that the Contested Decision did not violate Article 4(1)(b) of Regulation 1049/2001.
76. As to the exceptions pursuant to Article 4(1)(a) fourth indent and Article 4(2) of Regulation 1049/2001 relied on by the Board, based on the above mentioned considerations on their (to some extent) open-texture nature, the Appeal Panel has exercised its judgment on many occasions, examining the nature and content of the specific documents. In particular, it has sought to scrutinize the substance of the Board’s grounds with precision and particular regard to the concrete circumstances, especially in cases where the grounds for objection required expert and technical assessment, such as allegations that the disclosure of documents could undermine financial stability, or give rise to unfounded speculations in the market. The Appeal Panel remitted the case to the Board whenever the grounds were found to be insufficient, making distinctions between the reasonableness of different grounds, and the justifiability of different redactions, when such distinctions were needed. Such balance between nuance and expert judgment can be found, e.g., in the Appeal Panel’s decision 18/18, at paragraphs 37, 41-43, 48, decision 19/2018, at paragraphs 32, 39-40 or 52, decision 21/2018, at paragraphs 49-52, 57-62, decision 9/2019, at paragraphs 33-40, or decision 1/2021, at paragraphs 37-38, 44-47.
77. In light of the foregoing, after having carefully considered the statement of reasons of the Contested Decision and the content of the confidential version of the [.], of the Notary Minutes and of the [.] and, more in particular, the specific reasons stated by the Board in the Contested Decision to justify on an individual basis the several redactions made by the Board in the public versions of such documents, the Appeal Panel has reached the following conclusions.

78. The Board is right in pointing out that requests to public access to documents need to be assessed in the same way independently of whether the applicant had put forward any particular circumstance (e.g., the applicant's need to use those documents in proceedings before the General Court) that would distinguish him from any other EU citizen (see to this effect judgment of 6 October 2021, *OCU v ECB*, T-15/18, ECLI:EU:T:2021:661, paragraphs 103-105).
79. The Board is also right in pointing out that once a document is disclosed to an applicant pursuant to Regulation 1049/2001 access to the same document cannot be refused to any other member of the public.
80. Nonetheless the Appeal Panel finds, first, that the statement of reasons of the Contested Decision is insufficient because the Board – unlike what the SRB's legal counsels have correctly done in the Board's response (§§ 63 to 72) and in the Board's reply to the Appellant's rejoinder (§§ 22 to 28) - has not properly and specifically justified in the Contested Decision (nor in its initial response, to which the Contested Decision made also reference as to the statement of reasons) the refusal of public access for several parts of the [.], of the Notary Minutes and of the [.] which have been redacted. In particular the Board has failed to properly and specifically justify several redactions in a clear and unequivocal manner, from which it is possible to understand and ascertain, first, whether that redacted part or information does in fact fall within the sphere covered by the exception relied on and, secondly, whether the need for protection relating to that exception is genuine.
81. Second, the Appeal Panel finds that the Board has also committed a manifest error of assessment in its determination that, in the given circumstances of the current appeal, a number of the redactions made in the public version of the [.] were justified under the exceptions of Article 4(1)(a) fourth indent of Regulation 1049/2001.
82. The Appeal Panel notes, in particular, that in its confidential review of [.] the Appeal Panel could understand and accept that the redaction of some information and of certain data or sentences were actually and genuinely justified in order to protect third party commercial interests, as it was also the case with several redactions of the Notary Minutes and of the [.].
83. The Appeal Panel could also accept that a few, selected other redactions could, in fact, be genuinely justified by relying on the need to protect the financial policy of the Union pursuant to Article 4(1)(a) fourth indent, including some redactions in the Notary Minutes. The Appeal Panel holds, however, that the redactions made to the [.] relying on such an exception went too far.
84. In this connection, the Appeal Panel considers in particular that it is hardly credible that the disclosure of several redacted parts, data and sentences of the [.], including some percentages giving evidence of how the liquidity situation of the credit institution had deteriorated in the days preceding the resolution, would plausibly undermine the stability of the financial system of the Union and its financial or economic policy.

85. This is the case of redacted references in the [.] (hereby referred to in order to illustrate the points at stake), for example: (i) to the geopolitical reasons giving rise to the difficulties of the institution ([.] of [.]), (ii) to at least the main percentages giving evidence of how the liquidity situation of the institution deteriorated in the days preceding the resolution and how this situation was assessed by the authorities to conclude that the entity was failing or likely to fail ([.] of [.]), (iii) to the ECB assessment of the absence of any reasonable prospect that early intervention measures could prevent the failure of the institution ([.] of [.]).
86. The Appeal Panel sides with the Appellant that it is manifestly erroneous to assess that the above data and information may plausibly give rise to unfounded speculations about the way in which the SRB might act in the future and may unreasonably influence the behaviour of other market participants and compromise the effectiveness and reliability of the internal methodology used by the SRB for the preparation for resolution and for the resolution of financial institutions. There is no indication in the framework of resolution that the Board is subject to rigid triggers, and/or must apply those triggers in a mechanistic fashion. On the contrary, the triggers of an idiosyncratic crisis are often context-specific, and therefore lessons learnt from the data pertaining to a specific crisis, such as the one of [.], are not necessarily transposable to other financial institutions.
87. Disclosing meaningful details of the triggers in a crisis, in the Appeal Panel's view, does not compromise the methodologies of the SRB nor would lead to a misunderstanding and a generalised expectation that the SRB will necessarily act in a similar way in all future crises. Furthermore, there were special surrounding circumstances which gave rise to the liquidity crisis of [.], due to a sudden and extremely serious geopolitical crisis. If anything, it would be the refusal to disclose that could give rise to unfounded speculations as to the circumstances that led to the crisis management measures adopted over [.]. Indeed, in a situation where there is already rampant speculation over the real situation of the bank, and the rationale for deploying crisis management measures over it, disclosure can limit such speculation, and help the public assess that the grounds and methodology were technical in nature.
88. Thus, contrary to the Board's view, the Appeal Panel finds that wider public access to the information available in the [.] on how the [.] liquidity situation deteriorated and how the steps taken by the SRB sought to protect the public interest in the specific circumstances of that failure should strengthen, not undermine, the financial policy and financial stability of the Union. Disclosure of the circumstances and methodologies not only make the Board more accountable. They also help other market participants and the public at large to gain a better understanding of the measures taken by the Board and enhance public trust.
89. From this point of view, if anything, the protection of the financial policy of the Union under article 4.1.a) fourth indent of Regulation 1049/2001 is better served, in the Appeal Panel's view, by more, rather than by less public disclosure.
90. For the same reason, the Appeal Panel wishes also to note that, whilst it understands that several elements of the Notary Minutes and [.] could be validly redacted pursuant to Article

4(2) of Regulation 1049/2001, it is not fully persuaded (also due to the lack of a specific reasoning in the Contested Decision pertaining to each element which has been redacted) that all redactions made in the Notary Minutes and in the [.] are genuinely justified under the exception relied on by the Board. The Appeal Panel invites therefore the Board to duly reconsider, in the preparation of the appropriate statement of reasons for the amended decision following this Appeal Panel's decision, whether and to what extent additional elements of the Notary Minutes and of the [.] could also be publicly disclosed.

91. Since in the regulatory design of the SRMR the Appeal Panel is not given any power which lies with the competence of the Board but it can only confirm the Board's decision or remit the case to the Board (and this is a feature which, in the Appeal Panel's view, is importantly associated with the institutional design of this agency), the Appeal Panel cannot perform any *de novo* assessment of the Confirmatory Application.
92. Yet, since the Appeal Panel has held that the statement of reasons of the Contested Decision is insufficient and that the Board committed a manifest error in assessment in relying on the exception of Article 4(1)(a) fourth indent to justify several redactions in the public version of the [.], the case needs to be remitted to the Board, who shall adopt an amended decision in line with the principles stated herein.

On those grounds, the Appeal Panel hereby:

Remits the case to the Board

Helen Louri-Dendrinou

(SIGNED)

Kaarlo Jännäri

(SIGNED)

Luis Silva Morais
Vice-Chair and Co-Rapporteur

(SIGNED)

Marco Lamandini
Co-Rapporteur

(SIGNED)

Christopher Pleister
Chair

(SIGNED)

For the Secretariat of the Appeal Panel:

[.]

(SIGNED)