

## 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 S.A. have been effected**

**(SRB/EES/2020/52)**

(Only the English text is authentic)

THE SINGLE RESOLUTION BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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>, and in particular paragraphs (16), (17) and (18) of Article 20 as well as Article 76(1)(e) thereof,

Whereas:

### 1. Background

- (1) On 7 June 2017, the Single Resolution Board (the "**SRB**" or the "**Board**") took a decision concerning the adoption of a resolution scheme in respect of Banco Popular Español S.A.<sup>2</sup> (the "**Resolution Decision**"). Following the endorsement of the Resolution Decision by the European Commission,<sup>3</sup> the SRB notified its decision to the relevant national resolution authority, FROB, which, on the same day, adopted the necessary measures to implement it.<sup>4</sup>

---

<sup>1</sup> 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> Resolution of the FROB Governing Committee adopting the measures required to implement the Decision of the Single Resolution Board in its Extended Executive Session of 7 June 2017 concerning the adoption of the resolution scheme in respect of Banco Popular Español, S.A., addressed to FROB, in accordance with Article 29 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

- (2) Pursuant to Articles 5 and 6 of the Resolution Decision, the resolution action in respect of Banco Popular Español S.A. (the "**Institution**") consisted of the application of the sale of business tool to transfer the shares in the Institution to Banco Santander S.A. (the "**Purchaser**"),<sup>5</sup> following the exercise of the powers to write down and convert the capital instruments of the Institution.<sup>6</sup>
- (3) Following the implementation of the Resolution Decision, the SRB had to ensure that a valuation of the difference in treatment as referred to in paragraphs (16) to (18) of Article 20 of Regulation (EU) No 806/2014 ("**Valuation 3**") is carried out as soon as possible by a person independent from any public authority, including the SRB and the national resolution authority, and from the entity concerned, with a view to taking a decision whether the shareholders and creditors in respect of which the resolution actions concerning the Institution have been effected ("**Affected Shareholders and Creditors**") are entitled to compensation from the Single Resolution Fund ("**SRF**") in accordance with Article 76(1)(e) of Regulation (EU) No 806/2014.

## 2. Procedure

### 2.1. Procedure related to the appointment of Deloitte as independent Valuer

- (4) On 23 May 2017, in the context of its preparation for a potential resolution of the Institution and following a procurement procedure, the SRB hired Deloitte Réviseurs d'Entreprises ("**Deloitte**" or the "**Valuer**")<sup>7</sup>, as an independent valuer in the context of its preparation for a potential resolution of the Institution. In particular, Deloitte was awarded the relevant specific contract,<sup>8</sup> following a reopening of competition in the context of the multiple framework contract for services No SRB/OP/1/2015 (Lot 2) that the SRB had signed with six firms, including Deloitte. In accordance with the specific contract between the SRB and Deloitte, the assignment of Deloitte included, *inter alia*, the performance, after a potential resolution action in respect of the Institution, of a valuation of difference in treatment as referred to in Article 20(16) and (17) of Regulation (EU) No 806/2014.
- (5) In the context of the preceding procurement procedure leading to the multiple framework contract for services, the SRB had established, based on the information provided by Deloitte, that Deloitte possessed the necessary qualifications, experience, ability and knowledge in all matters considered relevant by the SRB and that it held, and had access to, human and technical resources appropriate to carry

---

amending Regulation (EU) No 1093/2010, available at [http://www.frob.es/en/Lists/Contenidos/Attachments/419/ProyectedoAcuerdoreducido\\_EN\\_v1.pdf](http://www.frob.es/en/Lists/Contenidos/Attachments/419/ProyectedoAcuerdoreducido_EN_v1.pdf).

<sup>5</sup> Pursuant to Article 24(1)(a) of Regulation (EU) No 806/2014.

<sup>6</sup> Pursuant to Article 21 of Regulation (EU) No 806/2014.

<sup>7</sup> In accordance with the relevant specific contract, Deloitte engaged personnel from its offices in Belgium, Spain and the United Kingdom.

<sup>8</sup> Specific contract No. 8 implementing framework contract No SRB/OP/1/2015 - Lot 2, 23 May 2017.

out the relevant valuations. Furthermore, prior to its appointment, Deloitte submitted to the SRB a general declaration of absence of conflict of interest in relation to the Institution dated 18 May 2017. On 23 May 2017, Deloitte also provided a declaration concerning its independence in accordance with the Commission Delegated Regulation (EU) 2016/1075.<sup>9</sup> On the same date, the SRB awarded the specific contract to Deloitte as an independent valuer.

- (6) Since its appointment, Deloitte also provided additional declarations concerning its independence following the addition of new members to the team working on the Valuation 3.<sup>10</sup> Moreover, in a declaration dated 18 December 2019, Deloitte confirmed that on 15 November 2019, based on its internal systems and controls, it was and has been independent for the purposes of the Valuation 3 and is not aware of any conflicts with other work that Deloitte performs, nor any individual conflicts.

## 2.2. Procedure related to the Valuation 3 Report and the SRB's Notice

- (7) Following the implementation of the resolution scheme, Deloitte, appointed as the independent valuer, performed the Valuation 3 starting in June 2017. On 14 June 2018,<sup>11</sup> the SRB received Deloitte's report on the Valuation 3 in respect of the resolution of the Institution.
- (8) On 31 July 2018, the SRB received an addendum from Deloitte, correcting certain clerical errors in the report.<sup>12</sup> The consolidated version of the report ("**Valuation 3 Report**") is attached to this decision as **Annex I**. The main elements of the Valuation 3 Report are also described in Section 5.

---

<sup>9</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.

<sup>10</sup> Following the addition of team members, Deloitte provided to the SRB additional declarations concerning its independent valuation on 21 September 2017 and 11 April 2019.

<sup>11</sup> A soft copy of the Valuation 3 Report was received by the SRB by e-mail on 13 June 2018.

<sup>12</sup> The following clerical errors were corrected:

- (i) In table "Estimated assets realisation values in liquidation" on page 8, the estimate of the assets realization value for "joint ventures, associates and subsidiaries" in the worst case of the liquidation scenarios was amended from "7,494" to "7,496". The same change was implemented in table "Banco Popular legal entity; 18 months, 3 years and 7 years" on page 70.
- (ii) The title of the graph on page 9 was amended from "NCWO Outcome for Banco Popular legal entity (Creditor losses) (€m)" to "NCWO Outcome for Banco Popular legal entity (Creditor losses) (€bn)";
- (iii) In table "JV, Subsidiaries & Associates NBV" on page 55, the column named "Best case" was renamed to "Worst case" and the column named "Worst case" was renamed to "Best case". The same change was implemented in table "JV, Subsidiaries & Associates realisation" on page 57.

- (9) Once the SRB received the Valuation 3 Report, it proceeded to prepare its preliminary decision on whether it needs to pay compensation to the Affected Shareholders and Creditors.
- (10) With a view to enabling Affected Shareholders and Creditors to exercise their right to be heard while taking into account the limitations as regards disclosure of confidential information set forth in Article 88 of Regulation (EU) No 806/2014, the SRB prepared a non-confidential version of the Valuation 3 Report to be published together with its preliminary decision. In that regard, the SRB consulted the Institution in order to identify any information that the SRB had to redact to protect confidential information of the Institution covered by professional secrecy. On the basis of the consultation with the Institution, and balancing the interests of the Affected Shareholders and Creditors with the SRB's obligation not to disclose information covered by professional secrecy, the SRB redacted certain limited information from Section 4.9 of the Valuation 3 Report.
- (11) In addition, in order to enable the exercise of the right to be heard by the Affected Shareholders and Creditors, the SRB translated the Valuation 3 Report into Spanish.<sup>13</sup>
- (12) After finalising the process described in recitals (10) and (11), the SRB adopted its Notice of 2 August 2018 ("**Notice**")<sup>14</sup> indicating its preliminary decision that it is not required to pay compensation to the Affected Shareholders and Creditors pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014. In particular, the SRB considered that the Valuation 3 Report constituted an appropriate and sufficient basis for the SRB to take a preliminary decision whether compensation needs to be granted to the Affected Shareholders and Creditors. The SRB noted that it follows from the Valuation 3 Report that there would have been no difference between the actual treatment of the Affected Shareholders and Creditors and the treatment that they would have received had the Institution entered normal insolvency proceedings on the date of the Resolution Decision, namely 7 June 2017 ("**Resolution Date**").
- (13) On 6 August 2018, the SRB published the Notice on its website, annexing a non-confidential version of the Valuation 3 Report.<sup>15</sup> On 7 August 2018, an announcement of the Notice was published in the Official Journal of the EU.<sup>16</sup>

---

<sup>13</sup> Additional information on the hearing process is available on the SRB website at <https://srb.europa.eu/en/content/banco-popular>.

<sup>14</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).

<sup>15</sup> See SRB website on the Banco Popular case at <https://srb.europa.eu/en/content/banco-popular>.

<sup>16</sup> OJ C 277I, 7.8.2018, p. 1.

### 2.3. Right to be heard process

- (14) By the same Notice, the SRB launched the right to be heard process. During this process, the Affected Shareholders and Creditors, fulfilling certain formal requirements specified below, were able to submit comments to inform the final decision of the SRB as to whether compensation needs to be granted to them on the basis of Article 76(1)(e) of Regulation (EU) No 806/2014.

#### 2.3.1. Registration phase

- (15) The Notice, *inter alia*, sets out the procedure for organising the first phase of the right to be heard process (recitals 37 to 41 of the Notice), namely the registration phase. During this phase, the Affected Shareholders and Creditors were invited to express their interest in participating in this process and to prove their qualification as Affected Shareholders or Creditors and therefore their eligibility to submit comments during the second phase. In particular, they were requested to submit a valid proof of identity and an accepted proof of ownership of the written down or converted and transferred capital instruments.<sup>17</sup> The registration phase remained open from 6 August 2018 until 14 September 2018 (12:00 noon, Brussels time). Since the SRB had already published, together with the Notice, the non-confidential version of the Valuation 3 Report on its website on 6 August 2018, all Affected Shareholders or Creditors had sufficient opportunity to review and analyse the Valuation 3 Report already during the registration period for the hearing process.
- (16) Once the registration period started and the first submissions were received,<sup>18</sup> the SRB verified, on the basis of the supporting documentation submitted, whether the expressions of interest were eligible in light of the criteria set out in the Notice.
- (17) In cases where the supporting documents were not considered sufficient to prove the party's qualification as an Affected Shareholder or Creditor, the SRB set out the deficiency (or deficiencies) identified in the registration phase and requested the relevant party to resubmit the expression of interest together with the relevant additional documents to rectify the deficiency.
- (18) Where the party who expressed his or her interest did not make a resubmission, or where the resubmission was found not to meet the relevant eligibility requirements

---

<sup>17</sup> For details, see recital 38 of the Notice.

<sup>18</sup> In accordance with recital 37 of the Notice, those expressions of interest which were submitted after the end of the above registration period were not taken into consideration for the exercise of the right to be heard, to the extent that they did not provide a justification for the late submission by referring to circumstances falling within the SRB's responsibility or circumstances amounting to a situation of *force majeure*. Accordingly, the Chair of the SRB adopted the decision of 26 November 2018 on the list of individuals having expressed their interest to exercise the right to be heard after the expiry of the deadline set by the Notice of the Single Resolution Board of 2 August 2018.

as set out in the Notice<sup>19</sup>, such party was informed that, on the basis of the information provided, his or her expression of interest was deemed ineligible.

- (19) On 16 October 2018, the SRB pre-announced on its website that parties which would be deemed eligible would be invited to submit written comments to the SRB as from 6 November 2018 on the Notice and its underlying reasoning.<sup>20</sup>

### **2.3.2. Consultation phase**

- (20) On 6 November 2018, the SRB informed the parties whose registrations were deemed eligible about the opening of the second phase of the right to be heard process, namely the consultation phase. During this phase, which lasted until Monday 26 November 2018 (12.00 noon, Brussels time), eligible parties were invited to submit their written comments on the preliminary decision not to compensate the Affected Shareholders and Creditors, and its underlying reasoning and, in particular, the Valuation 3 Report, as already published by the SRB on 6 August 2018.
- (21) These eligible parties, or their representatives, received by email a unique personal link to a dedicated online portal, which provided them with access to a comment form. In anticipation of the volume of expressions of interest that would be submitted during the registration phase, the comment form was designed to allow the SRB to process and assess the expected comments in a structured manner and, thus, ensure the efficient completion of the process. The comment form covered the main elements of the Notice and also enabled the eligible parties to submit additional comments on elements which were not explicitly covered. The SRB also processed and assessed comments of one representative submitted on behalf of several eligible parties outside the dedicated online portal but following the structure of the comment form and within the set deadline.
- (22) During the consultation phase, the SRB received one request for access to file pursuant to Article 90(4) of Regulation (EU) No 806/2014, and, in particular, the information obtained by the Valuer for the performance of the Valuation 3 Report.
- (23) As noted above in recital (12), the SRB considered that the Valuation 3 Report constituted an appropriate and sufficient basis for the SRB to reach the preliminary decision that it was not required to compensate the Affected Shareholders and Creditors and, in particular, that the information included therein was sufficient for the SRB to understand the methodology followed by the Valuer. As a result, the SRB provided the party requesting access to file the following documents in line with Article 90(4) of Regulation (EU) No 806/2014: (i) the cover letter of the Valuer dated 12 June 2018, enclosing the final report of the Valuer on the valuation of difference

---

<sup>19</sup> Decision of the Chair of the Single Resolution Board of 31 October 2018 on the list of registrants found ineligible to participate in the second phase of the right to be heard process launched by the Notice of the Single Resolution Board of 2 August 2018.

<sup>20</sup> See the SRB Press release "*Banco Popular Español (BPE) Resolution: SRB announces next steps in right to be heard process*" of 16 October 2018.

in treatment, as received by the SRB by mail on 14 June 2018; (ii) the cover letter of the Valuer dated 31 July 2018, enclosing the Valuer's addendum submitted to the SRB on 31 July 2018, and (iii) the cover letter of the Valuer dated 31 July 2018, enclosing the consolidated version of the Valuer's report on valuation of difference in treatment, as submitted to the SRB on 31 July 2018 (reflecting the changes made in the addendum).

- (24) These documents were subject to certain redactions in line with Article 88(5) in combination with Article 90(4) of Regulation (EU) No 806/2014. The extent of the redacted information was restricted to specific individual estimates and statements in Section 4.9 "*Legal contingencies*", while information on the nature and the source of the specific claims and the aggregate estimated realisations have not been redacted. The redacted information is beyond public information and to a certain extent is forward looking and its disclosure could potentially undermine the Institution's right of defence in ongoing litigation proceedings. In light of the above, following a careful balancing of the interests of the Affected Shareholders and Creditors with the interests of the Institution, the SRB decided not to provide the Affected Shareholders and Creditors with access to the limited information redacted from Section 4.9 of the published non-confidential version of the Valuation 3 Report. In addition, personal data included in the cover letters of the Valuer were blacklined on the basis of Article 89 of Regulation (EU) No 806/2014.
- (25) The information included in these documents was already reflected in the Notice and the Valuation 3 Report annexed thereto, as published on the SRB's website on 6 August 2018.

### **2.3.3. Procedure related to the review of the comments received from eligible Affected Shareholders and Creditors**

- (26) At the end of the consultation phase, the SRB had received 2,855 submissions through the dedicated online portal and one submission outside this portal. Given the structure of the comment form and the different fields therein, the total number of filled-in comment boxes amounted to approximately 23,822, each of those addressing one or more aspects. The SRB carefully examined all comments received.
- (27) 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.<sup>21</sup> Ultimately, comments that did not relate to the SRB's preliminary decision and its underlying reasoning, and which could thus not affect whether Affected Shareholders and Creditors would have received better treatment if the Institution had entered into normal insolvency proceedings, were considered to fall outside the scope of the

---

<sup>21</sup> See Section 6.1 below.

right to be heard process and were not taken into consideration for the purposes of the adoption of the present decision.

- (28) Subsequently, the SRB grouped all relevant comments, taking into account the fact that Affected Shareholders and Creditors have provided 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<sup>22</sup> and to consider whether the Valuation 3 Report remained valid in light of these comments (the "**Clarification Document**").<sup>23</sup>
- (29) Deloitte provided the Clarification Document to the SRB on 18 December 2019. It is attached to this Decision as **Annex II**.
- (30) The relevant comments from the Affected Shareholders and Creditors will be described and assessed below by grouping them by topic (see Section 6 below).

### 3. Legal Framework

- (31) Article 15(1)(g) of Regulation (EU) No 806/2014 establishes the "*no creditor worse off*" ("**NCWO**") principle, namely that no creditor shall incur greater losses in resolution than would have been incurred had the entity been wound up under normal insolvency proceedings. This principle aims to implement in the resolution framework the safeguards set out in Articles 17 and 52 of the Charter of Fundamental Rights of the European Union ("**CFREU**")<sup>24</sup> under which limitations to the rights of property are allowed under specific circumstances, provided that a "*fair compensation*" is paid.
- (32) In order to make those safeguards effective, paragraph (16) of Article 20 of Regulation (EU) No 806/2014 requires a valuation of difference in treatment to be carried out "*for the purposes of assessing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings*". Such a valuation, also known as a valuation 3, is to be carried out by an independent person "*as soon as possible after the resolution action or actions have been effected*".
- (33) It is important to highlight that an ex-post Valuation 3 serves a different purpose compared to the valuations performed prior to resolution. Within this type of ex-ante

---

<sup>22</sup> In particular, the SRB provided Deloitte with an excel file including the relevant comments related to the content of the Valuation 3 Report and submitted through the online portal, and the relevant parts of the submission received outside the online portal, split in seven word documents to reflect the structure of the comment form.

<sup>23</sup> See Section 6.2 below.

<sup>24</sup> Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407. See also recitals 61 and 62 of Regulation (EU) No 806/2014.



valuations, a further distinction can be made between the valuation which aims to inform the assessment whether the conditions for resolution or for exercising the write down and conversion powers are met under Article 20(5)(a) of Regulation (EU) No 806/2014 ("**Valuation 1**") and the valuation which aims to inform the SRB's decision in relation to specific resolution tools under Article 20(5)(b)-(g) of Regulation (EU) No 806/2014 ("**Valuation 2**"). In this regard, the legislator has provided for the application of different criteria when carrying out these separate and distinct valuations.<sup>25</sup>

- (34) Article 20(1) of Regulation (EU) No 806/2014 sets out the requirements that the valuer must fulfill to be considered independent. In particular, the valuer must be independent from any public authority, including the SRB and the national resolution authority, and from the entity concerned.
- (35) Articles 38-41 of the Commission Delegated Regulation (EU) 2016/1075 specify the elements of independence. Accordingly, a valuer shall be deemed to be independent from any relevant public authority and the relevant entity where it: (i) possesses the qualifications, experience, ability, knowledge and resources required and can carry out the valuation effectively without undue reliance on any relevant public authority or the relevant entity in accordance with Article 39 of that Commission Delegated Regulation; (ii) is legally separated from the relevant public authorities and the relevant entity in accordance with Article 40 of that Commission Delegated Regulation; and (iii) has no material common or conflicting interest within the meaning of Article 41 of that Commission Delegated Regulation.
- (36) The methodology to be used to conduct a valuation 3 has been further outlined in the Commission Delegated Regulation (EU) 2018/344, which sets out the regulatory technical standards ("**RTS**") specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution.<sup>26</sup> The Commission Delegated Regulation (EU) 2018/344 is based on the final draft RTS on valuation after resolution submitted by the European Banking Authority ("**EBA**") on 23 May 2017.<sup>27,28</sup>

---

<sup>25</sup> In particular, the criteria to perform Valuations 1 and 2 are set out in the Commission Delegated Regulation (EU) 2018/345 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 methodology for assessing the value of assets and liabilities of institutions or entities, OJ L 67, 9.3.2018, p. 8-17.

<sup>26</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. 3-7. In the absence of objections of the European Parliament and the Council of the European Union, the Commission Delegated Regulation entered into force 20 days after its publication in the Official Journal of the European Union, i.e. on 29 March 2018.

<sup>27</sup> See EBA Press release of 23 May 2017 "EBA publishes final technical standards on valuation in resolution" and the Final draft RTS on valuation after resolution of 23 May 2017, EBA/RTS/2017/06 published on the EBA website.

<sup>28</sup> See Recitals (7) and (8) of the Commission Delegated Regulation (EU) 2018/344.

- (37) In accordance with Article 20(17) of Regulation (EU) No 806/2014 and Article 3 of the Commission Delegated Regulation (EU) 2018/344, a valuation 3 shall determine:
- (i) the treatment that shareholders and creditors in respect of which resolution actions have been effected, or the relevant deposit guarantee scheme, would have received had the entity entered into normal insolvency proceedings at the time when the resolution decision is taken, disregarding any provision of extraordinary public financial support;
  - (ii) the value of the restructured claims or other proceeds received by the above shareholders and creditors as at the actual treatment date, discounted back to the date when the resolution decision is taken, if necessary; and
  - (iii) whether the outcome of the treatment under point (i) exceeds the outcome of the value referred to in point (ii) for each creditor.
- (38) It follows that the independent valuer shall compare the treatment of creditors and shareholders under the actual resolution scheme versus the counterfactual hypothetical scenario of normal insolvency proceedings. When considering the relevant counterfactual scenario of normal insolvency proceedings, the entity's discounted expected cash flows are determined also factoring in the impact of insolvency laws and practices in the relevant jurisdiction, as well as the costs associated with the insolvency proceedings and overall process.<sup>29</sup>
- (39) The legal framework provides that a valuation 3 shall be based on information concerning facts and circumstances that existed and could reasonably have been known as of the resolution decision date, which, had they been known, would have affected the measurement of the entity's assets and liabilities at that date.<sup>30</sup> The independent valuer shall prepare a valuation report, which shall include at least a summary of the valuation, an explanation of the key methodologies and assumptions adopted, and how sensitive the valuation is to these choices, and an explanation, where feasible, why the valuation differs from other relevant valuations.<sup>31</sup>
- (40) If the independent valuer determines in its Valuation 3 that the affected shareholders and creditors have incurred greater losses through the resolution scheme than they would have incurred under normal insolvency proceedings, they would be entitled to compensation for the difference in treatment from the SRF, pursuant to Article 76(1)(e) of Regulation (EU) No 806/2014.

---

<sup>29</sup> Article 4 of Commission Delegated Regulation (EU) 2018/344.

<sup>30</sup> Article 1(1) of Commission Delegated Regulation (EU) 2018/344.

<sup>31</sup> Article 6 of Commission Delegated Regulation (EU) 2018/344.

#### 4. Deloitte as independent valuer

- (41) The SRB considers that Deloitte represented 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.
- (42) As noted above in Section 2.1, the SRB selected Deloitte as an independent valuer through a public procurement procedure. In accordance with this procedure, the SRB examined and ensured that Deloitte possessed the necessary qualifications, experience, ability, as well as knowledge and resources to carry out the valuations effectively without undue reliance on any relevant public authority or the Institution in line with the requirements of Articles 38(1) and 39 of the Commission Delegated Regulation (EU) 2016/1075. In particular, the SRB concluded that Deloitte – taking into account the nature, size and complexity of the valuation to be performed – holds such human and technical resources appropriate to carry out Valuation 3 in line with Article 39(2) of the Commission Delegated Regulation (EU) 2016/1075.
- (43) Moreover, the SRB considers that Deloitte also qualified as a legal entity independent from public authorities and from the Institution, within the meaning of Article 20(1) and (17) of Regulation (EU) No 806/2014. In fact, Deloitte is fully independent from the SRB and has not been engaged for the annual accounting work of the Institution.
- (44) Lastly, with regard to the absence of actual or potential material common or conflicting interests, as required by Article 41 of the Commission Delegated Regulation (EU) 2016/1075, Deloitte undertook an internal conflict check in accordance with applicable professional standards. Based on the outcome of that conflict check, Deloitte considered itself not to be conflicted with respect to its appointment as independent valuer. In this regard, Deloitte has provided the SRB with:
- a. a general declaration of absence of conflict of interest in relation to the Institution on 18 May 2017;
  - b. a declaration concerning its independence on 23 May 2017: by this declaration, the Valuer stated that it was aware of the relevant legal requirements and that appropriate arrangements had been made, where necessary, to ensure that neither Deloitte nor the specific team members had any material interest, as defined in Article 41 of the Commission Delegated Regulation (EU) 2016/1075. In such declaration, Deloitte undertook that the relevant team members working on the Valuation 3 would apply the operational rules set out to ensure confidentiality of the information. Deloitte also committed to put in place all the necessary arrangements to ensure that any future service provided to other parties would not compromise its independence. Finally, any addition of a new member to the team working on the Valuation 3 was subject to compliance with the independence

requirements and to prior SRB's approval to ensure the necessary professional qualifications and experience;

- c. additional declarations, dated 21 September 2017 and 11 April 2019, concerning its independence following the addition of new members of the team working on the Valuation 3, thereby ensuring that Deloitte's independence was preserved during the whole duration of the services;
- d. a declaration dated 18 December 2019, by which Deloitte confirmed that, on 15 November 2019, based on its internal systems and controls, it was and has been independent for the purposes of the Valuation 3 and is not aware of any conflicts with other work Deloitte performs, nor any individual conflicts.

(45) Based on these declarations and assurances provided by Deloitte, the SRB considers that Deloitte applied sufficient safeguards to avoid that actual or potential material interests in common or in conflict with any relevant public authority or the relevant entity (i.e. the Institution) could arise. Section 6.2.1 contains further detailed reasoning of the SRB that Deloitte at the time of the appointment as the independent valuer and thereafter during the performance of the Valuation 3 did not have an actual or potential material interest in common or in conflict with any relevant public authority or the relevant entity, in line with Article 41 of the Commission Delegated Regulation (EU) 2016/1075.

(46) In light of the above, the SRB considers that Deloitte represented an independent valuer in line with the requirements of Article 20(16) and Article 20(17) of Regulation (EU) No 806/2014 and Articles 39 to 41 of the Commission Delegated Regulation (EU) 2016/1075.

## **5. Valuation 3 Report**

(47) The Valuer has conducted a Valuation 3 in the context of the Institution's resolution in line with Regulation (EU) No 806/2014 and the Commission Delegated Regulation (EU) 2018/344.

(48) The Valuation 3 Report includes the elements under recitals (37) above.

### **5.1. Treatment of Affected Shareholders and Creditors under normal insolvency proceedings**

(49) First, the Valuer had to determine the treatment that shareholders and creditors in respect of which resolution actions have been effected would have received if the Institution had entered into normal insolvency proceedings at the time when the Resolution Decision was taken.

- (50) For the purposes of the Valuation 3 Report, Affected Shareholders and Creditors pursuant to Article 3 of the Commission Delegated Regulation (EU) 2018/344, were considered as referring to the holders of the Institution's share capital, of additional Tier 1 capital instruments, and of Tier 2 capital instruments listed in recital (4) of the Notice.<sup>32</sup>
- (51) In line with Article 20(18)(a) of Regulation (EU) No 806/2014 and Article 1(1) of the Commission Delegated Regulation (EU) 2018/344, the Valuation 3 Report was based on financial information as at 6 June 2017 (close of business) when available (Section 1.3 of the Valuation 3 Report). When reliable information as at 6 June 2017 could not be obtained despite all reasonable efforts, the Valuer either used information as at 31 May 2017 for areas where the variations during that 6-day period were not considered material or used appropriate assumptions or proxies, focussing on the most material items in terms of their potential impact on the Affected Shareholders and Creditors (Sections 1.3.1 and 1.3.2 of the Valuation 3 Report).
- (52) In accordance with the Valuation 3 Report, in light of the circumstances of the case and in particular, the inability of the Institution to pay its debts as they fall due, the initiation of normal insolvency proceedings at the Resolution Date would have resulted in the liquidation of the Institution, which would have entailed an accelerated realisation of assets, with no minimum binding price, and payment of net realisation to creditors in accordance with the hierarchy established by the Spanish Act 22/2003 of 9th July 2003 on Insolvency ("**Spanish Act 22/2003**").<sup>33</sup> Once the liquidation would have started, the Court would have appointed a liquidator, whose main function is to collect the assets of the entity, realise them and distribute the proceeds to creditors, according to the legally prescribed creditor hierarchy.
- (53) Moreover, in framing the liquidation scenario, the Valuer considered the macroeconomic context as expected at the Resolution Date. In this regard, the Valuer used the Spring 2017 Economic Forecast by the European Commission as a reference point for expectations as of the Resolution Date of the macroeconomic conditions in the years during which the liquidation of the Institution would occur. Nonetheless, the Valuer has not considered the impact of the liquidation of the Institution, one of the main banks in Spain, on the rest of the financial sector and the Spanish economy, which could have contributed to the deterioration of the macroeconomic conditions and therefore to further reduced recovery rates in a hypothetical insolvency scenario.
- (54) In accordance with the Valuation 3 Report, given that the insolvency proceedings under the Spanish Act 22/2003 are applied on a legal entity basis, the Valuer estimated the outcome of the hypothetical liquidation proceedings for the Institution on an entity basis. However, given that the liquidation of the Institution would have

---

<sup>32</sup> The Deposit Guarantee Scheme ("**DGS**") was not used in resolution and therefore it is not included in the definition of Affected Shareholders and Creditors.

<sup>33</sup> Ley Concursal (Ley 22/2003, de 9 de julio 2003, published in the Boletín Oficial del Estado n. 164, 10/07/2003.

consequences on the rest of the Banco Popular Group (“**Group**”) and vice-versa, the impact of the Institution’s liquidation on the rest of the Group was also considered in the Valuation 3 Report.

- (55) The Valuer noted that the liquidator’s ultimate objective would have been to carry out the asset realisation in a reasonable period. In this regard, the Valuer considered a number of alternative scenarios and possible strategies that a liquidator might have applied to maximise realisations to creditors in a reasonable period. Taking into account the Spanish regulatory framework, as referred to in the Valuation 3 Report, which provides for a liquidation phase of the insolvency proceedings of one-year period, after which any relevant party can request the replacement of the liquidator in case of undue prolongation of this phase, and the complexity of the hypothetical liquidation proceedings of the Institution, the Valuer assessed three alternative time scenarios, assuming that the longer periods would have allowed enhanced recoveries through a more orderly disposal and work out of assets:
- (i) a liquidation period of 18 months;
  - (ii) a liquidation period of 3 years; and
  - (iii) a liquidation period of 7 years.

The Valuer considered that in terms of how different creditors assess the liquidation plan, the suspension of payment of interest following the initiation of liquidation may be important. This was based on the fact that higher ranked creditors may consider that they are unlikely to be compensated for delays in repayment of amounts due, while the suspension of interest could be of benefit to creditors who rank lower in the creditor hierarchy. Against that background, the Valuer considered that it would be unreasonable to require creditors to wait longer than 7 years for the liquidation to complete.

- (56) The Valuer considered the liquidator’s approach to maximising the value of the assets and distributing realisations to creditors. For each asset class, the Valuer applied specific assumptions on its valuation methodologies to estimate the recovery value (in cash terms) based on the liquidator’s anticipated realisation strategy. Where the outcome of the asset realisation strategies is dependent on factors that cannot be known with certainty, the Valuer presented a best-case and a worst-case scenario within each of the three alternative time scenarios. The Valuer estimated that based on the updated balance sheet with EUR 126.3 billion of assets as at 6 June 2017, the liquidator would have been able, depending on the scenario, to recover between EUR 95.1 billion (in the worst case of the 18 months liquidation period scenario) and EUR 104.1 billion (in the best case of the 7 years liquidation period scenario).

- (57) The estimated realisation value of each asset class as well as the estimate of liquidation costs, for each of the scenarios have been summarised by the Valuer in Table 1.

**Estimated assets realisation values in liquidation**  
(€m)

Assets	NBV (6 June 2017)	18M Scenario		3Y Scenario		7Y Scenario	
		Best Case	Worst Case	Best Case	Worst Case	Best Case	Worst Case
Equity, fixed income and derivatives portfolios <sup>(1)</sup>	21,543	20,410	20,392	20,410	20,392	20,410	20,392
Loans and receivables	83,330	66,521	63,430	68,499	65,660	71,069	68,579
Joint ventures, associates and subsidiaries	9,908	8,382	7,496	8,382	7,496	8,382	7,496
Real Estate assets	3,728	2,514	2,252	2,832	2,624	2,946	2,758
Intangible assets	1,198	-	-	-	-	-	-
Tax assets	5,692	2,334	2,334	2,334	2,334	2,334	2,334
Other assets	1,045	166	166	166	166	166	166
<b>Total insolvency realisation</b>		<b>100,327</b>	<b>96,067</b>	<b>102,624</b>	<b>98,669</b>	<b>105,307</b>	<b>101,722</b>
Liquidation costs		(990)	(989)	(1,078)	(1,077)	(1,193)	(1,192)
<b>Total realisation for shareholders &amp; creditors</b>		<b>99,338</b>	<b>95,078</b>	<b>101,546</b>	<b>97,593</b>	<b>104,114</b>	<b>100,531</b>

(1): Equity, fixed income and derivatives portfolios includes cash and cash with the Central Banks totaling €1,334m, and excludes fixed income from the loans and receivables portfolio of €654m.  
Source: Banco Popular Individual Financial Statements; Deloitte analysis

Table 1: Estimated assets realisation values in liquidation

- (58) The Valuer established the list of creditor claims in Table 2 below, which also includes additional claims which could have arisen during the liquidation proceedings, but were not recognised on the Institution's balance sheet on 6 June 2017. In this regard, the Valuer estimated that the legal contingencies would amount to EUR 1.79 billion in the best case scenario and to EUR 3.45 billion in the worst case scenario.

**Creditor Hierarchy**  
(€bn)

Banco Popular Creditor Hierarchy

Covered creditor	49.9
Claims against the estate	1.0 / 1.1 / 1.2 <sup>1</sup>
General privileged creditor	33.1
Unsecured creditors	24.3 / 26.0 <sup>2</sup>
Including legal contingencies	+1.8 / 3.4 <sup>2</sup>
Subordinated claims	10.8

(1): 18 M / 3 Y / 7 Y respective  
(2): Best and worst case respectively  
Source: Banco Popular Individual Financial Statements; Deloitte analysis

Table 2: Creditor Hierarchy

- (59) Subordinated claims include the following main sub-categories, which rank in the following descending order of priority:

- (i) claims subordinated by contract, including the AT1 and T2 instruments which have been written down or converted and transferred to the Purchaser (EUR 2.04 billion);
  - (ii) claims consisting in charges or interest rates (EUR 0.1 billion); and
  - (iii) intra-group claims, which are subordinated to the lowest level of claims (EUR 8.6 billion).
- (60) The Valuer then allocated the total realisation for shareholders and creditors in each of the three time scenarios (see Table 1) to the claims, in accordance with their ranking under the applicable insolvency law (see Table 2). The outcome of the allocation of asset realisations to creditor claims would have resulted in the shortfalls (Creditor losses) displayed in Exhibit 1:

**NCWO Outcome for Banco Popular legal entity (Creditor losses)**  
(€bn)



(1) This includes €2.0bn of subordinated debt and €8.6bn of intra-group debt, totaling €10,8bn.  
(2) All creditor's losses in resolution (€11.4bn) were suffered by the shareholders and subordinated creditors of Banco Popular legal entity.  
Source: Banco Popular Individual Financial Statements, Deloitte analysis

**Exhibit 1: Shortfalls to creditors' claims in the different liquidation scenarios**

- (61) Allocating the total realisations to the above claims, the Valuer concluded that in all three alternative time scenarios the Affected Shareholders and Creditors would have received no recoveries. In particular:
- (i) In the 18 month liquidation period scenario, it was estimated that the liquidator would have been able to recover EUR 95.1 billion in the worst case and EUR 99.3



billion in the best case. Therefore, the equity and subordinated creditors (including the Affected Shareholders and Creditors) would have borne losses equal to 100% of the value of their rights, while the unsecured creditors would also have borne losses between EUR 8 billion (representing 33% of the value of their rights) and EUR 14 billion (representing 54% of the value of their rights) for the best and worst case respectively.

(ii) In the 3-year liquidation period scenario, it was estimated that the liquidator would have been able to recover EUR 97.6 billion in the worst case and EUR 101.5 billion in the best case. Therefore, the equity and subordinated creditors (including the Affected Shareholders and Creditors) would have borne losses equal to 100% of the value of their rights, while the unsecured creditors would also have borne losses between EUR 5.8 billion (representing 24% of the value of their rights) and EUR 11.5 billion (representing 44% of the value of their rights) for the best and worst case respectively.

(iii) In the 7-year liquidation period scenario, it was estimated that the liquidator would have been able to recover EUR 100.5 billion in the worst case and EUR 104.1 billion in the best case. Therefore, the equity and subordinated creditors (including the Affected Shareholders and Creditors) would have borne losses equal to 100% of the value of their rights, while the unsecured creditors would also have borne losses between EUR 3.3 billion (representing 13% of the value of their rights) and EUR 8.5 billion (representing 33% of the value of their rights) for the best and worst case respectively.

## **5.2. Actual treatment of Affected Shareholders and Creditors**

(62) As also stated in the Valuation 3 Report, the above resolution action taken in respect of the Institution resulted in the Affected Shareholders and Creditors, i.e. the holders of the Institution's share capital, of the additional Tier 1 instruments and the Tier 2 instruments, bearing losses equal to the entire value of the capital instruments held by them.

(63) Neither other creditors of the Institution nor the DGS have suffered losses as a result of the resolution action in respect of the Institution.

## **5.3. Assessment of the difference of treatment**

(64) The Valuer then compared the treatment that the Affected Shareholders and Creditors would have received in the best and worst cases for all the three time scenarios (see recital (61) above) with the actual treatment that Affected Shareholders and Creditors received in the resolution of the institution (see recital (62)). Table 3 below compares the implied losses to Affected Shareholders and Creditors in case of normal insolvency proceedings to their treatment in resolution:

**Allocation of estimated write-downs for Banco Popular  
(€m)**

Creditor Hierarchy	18M Scenario Write-Down			3Y Scenario Write-Down			7Y Scenario Write-Down		
	Liquidation Best case	Liquidation Worst case	Real Case (Resolution)	Liquidation Best case	Liquidation Worst case	Real Case (Resolution)	Liquidation Best case	Liquidation Worst case	Real Case (Resolution)
1. Covered creditor	-	-	-	-	-	-	-	-	-
o/w ECB	-	-	-	-	-	-	-	-	-
2. Credits against the estate	-	-	-	-	-	-	-	-	-
3. General privileged creditors	-	-	-	-	-	-	-	-	-
3.1. Taxes	-	-	-	-	-	-	-	-	-
3.2. DGS	-	-	-	-	-	-	-	-	-
3.3. Retail Non-covered deposits	-	-	-	-	-	-	-	-	-
4. Unsecured creditors	8,045	13,969	-	5,837	11,455	-	3,269	8,517	-
o/w Legal contingencies	591	1,854	-	429	1,520	-	240	1,131	-
5. Subordinated creditors	10,777	10,777	2,041	10,777	10,777	2,041	10,777	10,777	2,041
5.1. Subordinated debt	2,041	2,041	2,041	2,041	2,041	2,041	2,041	2,041	2,041
5.2. Interest claims	123	123	-	123	123	-	123	123	-
5.3. Fines & Sanctions	1	1	-	1	1	-	1	1	-
5.4 Intra-group debt	8,613	8,613	-	8,613	8,613	-	8,613	8,613	-
6. Equity	9,398	9,398	9,398	9,398	9,398	9,398	9,398	9,398	9,398
<b>Total Write-Down</b>	<b>28,220</b>	<b>34,144</b>	<b>11,439</b>	<b>26,012</b>	<b>31,630</b>	<b>11,439</b>	<b>23,444</b>	<b>28,692</b>	<b>11,439</b>

Source: Deloitte analysis

Table 3: Allocation of estimated write-downs for Banco Popular

(65) In light of the above, in the Valuation 3 Report, the Valuer concluded that Affected Shareholders and Creditors would not have received better treatment if the Institution had entered into normal insolvency proceedings compared to the actual treatment received in resolution.

#### 5.4. Compliance of the Valuation 3 Report with the legal framework

(66) The SRB considers that the Valuation 3 Report complies with the requirements of the applicable legal framework and is sufficiently reasoned and comprehensive to form the basis for a decision of the SRB under Article 76(1)(e) of Regulation (EU) No. 806/2014.

(67) The Valuation 3 Report assesses the necessary elements set out in Article 20(17) of Regulation (EU) No. 806/2014 and Article 3 of Commission Delegated Regulation (EU) 2018/344 (see recitals (37) and (49) to (65) above).

(68) In particular, to perform its valuation, as elaborated under recital (51), the Valuer relied on all information about facts and circumstances which existed and could reasonably have been known at the Resolution Date, including information on the assets and liabilities of the Institution and other entities of the Group.

(69) The Valuation 3 Report further explains the key methodologies and assumptions adopted by the Valuer and provides valuation ranges, reflecting the sensitivity of the valuation to different assumptions in line with Article 6(b) Commission Delegated Regulation (EU) 2018/344. It also includes a summary of the valuation together with

a presentation of valuation ranges and sources of valuation uncertainty in line with Article 6(a) Commission Delegated Regulation (EU) 2018/344.

- (70) In line with Articles 4(1) to (3) of the Commission Delegated Regulation (EU) 2018/344, the Valuer, when performing the valuation of assets and liabilities and, in particular when determining the expected cash flows under normal insolvency proceedings, took into account the applicable insolvency law, including the creditor hierarchy provided therein, in the relevant jurisdictions (Spain and Portugal) and, where relevant, past insolvency cases. The Valuer thus disclosed and clearly explained how the particularities of the insolvency regime in the relevant jurisdictions have been considered.
- (71) For assets traded and non-traded in active markets, the Valuer considered the factors referred to in Articles 4(4) and (5) of the Commission Delegated Regulation (EU) 2018/344 and, where appropriate, explained whether the financial condition of the Institution would have affected the expected cash flows. Moreover, the Valuer estimated the costs which could have been reasonably incurred by the liquidator in case of normal insolvency proceedings and in detail explained the underlying assumptions and reasoning (Sections 3.3 and 4.8 of the Valuation 3 Report) in line with Article 4(3)(b) of the Commission Delegated Regulation (EU) 2018/344.
- (72) Section 6.2.2. provides further reasoning why the SRB considers the Valuation 3 Report to be an appropriate and sufficient basis for this Decision.

## **6. Comments received from eligible Affected Shareholders and Creditors and their assessment**

- (73) The subsequent section sets out the SRB's conclusions whether the comments received by the SRB during the right to be heard process could impact its preliminary decision, taking into account the Valuer's Clarification Document.

### **6.1.Relevance assessment**

- (74) As mentioned above in recital (27), the SRB first conducted a relevance assessment considering whether the comments received from Affected Shareholders and Creditors concerned the preliminary decision of the SRB or its underlying reasoning, as contained in the Valuation 3 Report. Any comment that does not relate to the SRB's preliminary decision and its underlying reasoning, and which could not affect the assessment as to whether Affected Shareholders and Creditors would have received better treatment if the Institution had entered into normal insolvency proceedings was not considered relevant since falling outside the scope of the right to be heard process.
- (75) Among others, this concerns comments relating to the situation of the Institution prior to the resolution action or allegations that the Institution did not meet the conditions for resolution. In particular, some comments relate to the alleged failure of supervision, the solvency assessments communicated by authorities, the alleged breach of confidentiality duties by the SRB, the allegation that the Institution was

solvent and thus it was not “failing or likely to fail” (“**FOLTF**”), the alleged lack of implementation of alternative measures (such as early intervention measures) or the availability of additional emergency liquidity assistance subject to the provision of sufficient collateral and the existence of alternative private measures which could have prevented the Institution’s failure.

- (76) This also concerns comments relating to other elements of the Resolution Decision. In particular, the comments related to the appropriateness of: (i) the resolution action taken with respect to the Institution; (ii) the procedure followed before the adoption of the Resolution Decision; and (iii) the sale price paid by the Purchaser. Furthermore, Affected Shareholders and Creditors submitted comments concerning the valuation performed prior to the resolution informing whether the conditions for resolution were met and the resolution action, which were not taken into consideration as they fell outside the scope of the right to be heard process.
- (77) Moreover, some Affected Shareholders and Creditors submitted comments related to the lack of information on the Resolution Decision and the FOLTF assessment by the European Central Bank (“**ECB**”), the redactions contained in documents regarding the resolution of the Institution, as disclosed by the SRB under Regulation (EC) No 1049/2001,<sup>34</sup> the fact that the SRB has not commissioned the performance of an ex-post definitive valuation as referred to in Article 20(11) of Regulation (EU) No 806/2014, or the fact that retail holders of capital instruments are not aware of the resolution framework and the effects of a potential resolution. These comments also fall outside the scope of the right to be heard process.
- (78) Finally, comments were raised in relation to the design and execution of the right to be heard process, and, in particular, on the characteristics of the comment form, the lack of access to the documents underpinning the Valuation 3 Report and the redaction of certain information therein, the available time for Deloitte to perform the Valuation 3 compared to the time available for the Affected Shareholders and Creditors to submit comments. In this regard, the SRB notes that it has carefully taken into account these considerations when designing and executing the right to be heard process, as detailed above in Section 2.

## **6.2. Assessment of relevant comments**

- (79) As noted in recital (28), following the grouping of relevant 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, the SRB’s conclusions whether these comments could impact its preliminary decision take into account the Clarification Document of Deloitte.
- (80) The relevant comments from the Affected Shareholders and Creditors are described and assessed in this Section by grouping them by topic.

---

<sup>34</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48.

## **6.2.1. Comments related to the independence of the Valuer**

### **6.2.1.1. Comments related to the lack of independence of the Valuer from the SRB**

- (81) Certain Affected Shareholders and Creditors claim that there is a conflict of interest between the SRB and the Valuer since the SRB is the entity hiring the valuer and at the same time bearing the responsibility for any potential payment of compensation to the Affected Shareholders and Creditors from the SRF. Other Affected Shareholders and Creditors suggest that the submission of a draft Valuation 3 Report before its final submission cast doubts as to the independence of the Valuer vis-à-vis the SRB.
- (82) The SRB considers that the appointment of the Valuer by the SRB was in full compliance with the legal framework. As explained above in recital (32), Article 20(16) of Regulation (EU) No 806/2014 establishes that the SRB should ensure that a valuation 3 is performed by an independent person and thus implies that the SRB appoints such person. Against this background, Article 39(4)(b) of the Commission Delegated Regulation (EU) 2016/1075 provides that a valuer is not prevented from receiving from the resolution authority "*remuneration and expenses as are reasonable in connection with the conduct of the valuation*". In that regard, it is noted that the SRB appoints valuers in compliance with EU procurement rules, which aim at ensuring that the most economically advantageous offer is selected. The remuneration paid to the Valuer – which is based on a competitive procurement procedure – is reasonable and, therefore, cannot be considered to interfere with the Valuer's independence from the SRB.
- (83) Furthermore, Deloitte was mandated to perform the Valuation 3 in complete independence. The SRB did not provide Deloitte with instructions as regards the methodology to be used and the way of executing its tasks. In this context, it is recalled that the SRB is allowed to ask the valuer to provide for further clarifications of the wording of a valuation report when needed.<sup>35</sup> The SRB, therefore, did not interfere with Deloitte's independence.

### **6.2.1.2. Comments related to the auditing services provided by the Valuer to the Purchaser in the past**

- (84) Some of the comments received relate to the fact that Deloitte provided auditing services to the Purchaser in the past, prior to the adoption of the resolution action in respect of the Institution. In this regard, some comments refer to the circumstance that the Institute of Accounting and Audit (Instituto de Contabilidad y Auditoría de Cuentas) fined Deloitte in relation to the auditing of the individual and consolidated accounts of the Purchaser for the fiscal year 2011. The fine of EUR 1 million was

---

<sup>35</sup> See also Article 39(4)(a) of the Commission Delegated Regulation (EU) 2016/1075, pursuant to which the appointing authority is not prevented from providing instructions, guidance, premises, technical equipment or other forms of support where, in its assessment, this is considered necessary for achieving the goals of the valuation.

accompanied by the incompatibility to audit the annual accounts of the Purchaser for a period of three years and was confirmed by Spanish courts in May 2019.

- (85) The audit services referred to in recital (84) were not required to be taken into account in the assessment of independence conducted by the SRB at the time of the engagement of the Valuer on 23 May 2017, as the assessment of independence was carried out in relation to the Institution, in accordance with Chapter IV of the Commission Delegated Regulation (EU) 2016/1075. At that point in time, an assessment of the independence of the Valuer vis-à-vis the potential purchasers was not performed since it is not envisaged in the legal framework and given that the valuation procedure is a separate process from the marketing procedure which determines the purchaser. In particular, the Valuer did not have access to any information on the names of the potential purchasers or the identity of the Purchaser until the adoption of the resolution scheme.
- (86) The SRB considers that, in light of the scope and the purpose of the Valuation 3, the audit services provided in the past by the Valuer to the Purchaser do not interfere with the independence of the Valuer regarding the performance of the Valuation 3 and do not give rise to an actual or potential material interest in common or in conflict under Article 41 of the Commission Delegated Regulation (EU) 2016/1075.
- (87) In particular, the Valuation 3 concerns only the assets and liabilities of the Institution prior to its sale to the Purchaser and not the ones of the Purchaser. Moreover, considering the purpose of the Valuation 3, which aims to determine whether the Affected Shareholders and Creditors would have received better treatment in a hypothetical normal insolvency proceeding, the Valuation 3 could not have an effect on the concluded sale of the Institution to the Purchaser and cannot adversely affect the position of the Purchaser. The only effect of Valuation 3 is ultimately on the SRB, which would be required to pay compensation from the SRF in case of a difference in treatment.

**6.2.1.3. Comments related to the services provided by the Valuer to the Purchaser in relation to the integration of the Institution or the provision of compensation by the Purchaser to certain creditors of the Institution**

- (88) Several Affected Shareholders and Creditors claim that, post-resolution, the Purchaser procured the services of the Valuer in relation to the integration of the Institution or the provision of partial compensation by the Purchaser to certain creditors of the Institution.
- (89) The SRB considers that the above services provided by the Valuer to the Purchaser after the adoption of the resolution action in respect of the Institution do not constitute a material conflict of interest or interest in common within the meaning of Article 41(2) and Article 41(4) Commission Delegated Regulation (EU) 2016/1075,

with a relevant “person” within the meaning of Article 41(3) of that Regulation, for the reasons elaborated in recitals (90) and (93).

- (90) First, the SRB considers that this conclusion is supported by the scope and the purpose of the Valuation 3. As noted in recital (87), the Valuation 3 aims to determine the value of the Institution’s assets and liabilities in a hypothetical insolvency scenario on the Resolution Date. Therefore, any services provided by Deloitte after the Resolution Date on an ongoing concern basis, could not affect the Valuation 3 and the elements therein. Moreover, in these circumstances, the Valuation 3 could not adversely affect the position of the Institution or the Purchaser, since it only determines whether compensation through the SRF should be paid to the Affected Shareholders and Creditors.
- (91) Secondly, in any event, post adoption of the resolution scheme regarding the Institution, the Valuer provided additional assurances to guarantee that the services rendered to the Purchaser are not such that could give rise to an actual or potential material conflict of interest (see also recital (44)). In its declaration dated 18 December 2019, Deloitte confirmed that any service provided to the Purchaser was not related to the valuation or the financial reporting of the Institution’s assets or liabilities that are the subject of the Valuation 3 services. Moreover, Deloitte confirmed that there was no information flow between the valuation work performed for the SRB and other projects, given the safeguards in place and Deloitte’s confidentiality protocols.
- (92) In particular, as regards the services provided in relation to the integration of the Institution, the Valuer clarified to the satisfaction of the SRB that even though it provided consulting services to the Purchaser, they did not relate to the services provided to the SRB. More specifically, the Valuer stated that those services provided to the Purchaser did not relate to any matter in connection with the valuation services provided to the SRB nor did they comprise valuation or legal services related to the Institution.
- (93) As regards services relating to the provision of compensation by the Purchaser to certain creditors of the Institution, the Valuer clarified that the services did not relate to legal advice or advisory services on these claims. Notably, the Valuer was hired to design and implement a Single Coordination Center solution to collate information related to managing out-of-court and judicial claims with the aim of achieving efficiency and reducing management time. Specifically, the Valuer’s tasks consisted in services related to the monitoring and documenting of administrative information and preparing periodic reports. Moreover, the Valuer added that it did not have any participation in legal defense work since the Purchaser contracted external law firms to manage these claims, nor did it perform or calculate any amount of compensations offered by the Purchaser to the Institution clients.
- (94) In light of the above, the SRB considers that there was no actual or potential material interest in common or in conflict with the relevant entity under Article 41 of the Commission Delegated Regulation (EU) 2016/1075 which would undermine the Valuer’s independence.

**6.2.1.4. Comments related to the existence of a business relationship between the Valuer and certain investment companies with variable share capital (“SICAVs”) managed by the Institution**

- (95) Other Affected Shareholders and Creditors argue that Deloitte was not independent from the Institution due to the existence of a business relationship between Deloitte and the Institution. In particular, they noted that the Valuer conducted audits of certain SICAVs managed by the Institution.
- (96) However, in its declaration dated 18 December 2019, the Valuer confirmed that the SICAVs to which it provided services are not part of the Group and thus they were not within the scope of the Valuation 3. Given that the SICAVs were not group entities for the purposes of Article 41(3)(d) of the Commission Delegated Regulation (EU) 2016/1075, the SRB considers that the provision of services to the SICAVs cannot give rise to a potential or actual material interest in common or in conflict within the meaning of Article 41(1) of the Commission Delegated Regulation (EU) 2016/1075 and thus does not interfere with the independence of the Valuer regarding the performance of the Valuation 3.

**6.2.1.5. Comments alleging that the independence of the Valuer is compromised as it conducted both the Valuation 2 and the Valuation 3**

- (97) Several Affected Shareholders and Creditors claim that the Valuer should not have conducted the Valuation 3 since it had already performed the Valuation 2.<sup>36</sup> Moreover, some comments note that the Valuation 2 included an ex-ante estimate of the treatment that each class of shareholders and creditors would have received under normal insolvency proceedings and claim that the Valuer seeks to ratify the conclusions of the NCWO analysis performed in the Valuation 2.
- (98) At the outset, the SRB notes that the Valuation 2 and the Valuation 3 are conducted for different purposes and therefore use different approaches. The former aims to inform the resolution action by estimating the economic value of the assets and liabilities of the relevant entity at the time of implementation of the resolution action (see Article 20(5) of Regulation (EU) No 806/2014), while the latter aims to estimate the treatment of the affected shareholders and creditors in hypothetical insolvency proceedings, i.e. on a gone concern basis (see Article 20(18)(a) of Regulation (EU) No 806/2014).
- (99) In relation to these comments, the SRB points out that the legal framework does not prevent the SRB from appointing the same independent valuer to conduct different

---

<sup>36</sup> See Valuation 2 Report of Deloitte of 6 June 2017, published on the SRB’s website (<https://srb.europa.eu/en/content/banco-popular>) as a non-confidential version including Appendices and Addendum (“**Valuation 2 Report**”).



valuations for the same resolution case and such appointment *per se* does not impair the independence of the valuer.<sup>37</sup>

- (100) While the ex-ante estimate of the treatment of the Affected Shareholders and Creditors in hypothetical insolvency proceedings included in Valuation 2<sup>38</sup> was performed within a specific timeframe and on the basis of the information available to the Valuer before resolution (i.e. mainly on the basis of information as of 31 March 2017<sup>39</sup>), the Valuation 3 was performed on the basis of more granular information as at 6 June 2017 (close of business), when available. In light of the different information used as a basis for these assessments, as well as the different purpose thereof, the Valuer could well have reached different conclusions.
- (101) In any event, the conclusions in the Valuation 3 Report would ultimately only affect the SRB – which would be requested to pay compensation from the SRF in case of difference in treatment.
- (102) Therefore, the SRB concludes that the claims in relation to the independence of the Valuer being compromised given that it conducted both Valuation 2 and Valuation 3 are not established.

#### **6.2.1.6. Comments related to the previous work conducted by the Valuer in relation to other financial institutions**

- (103) The Affected Shareholders and Creditors also submit that the quality of the prior work performed by the Valuer with respect to the Valuation 2 and to other financial institutions should have cast serious doubt on the suitability of Deloitte and the decision of the SRB to procure its services in respect of the Institution for the purposes of the Valuation 3.
- (104) The SRB considers that the claims submitted by the Affected Shareholders and Creditors are not sufficiently established. As previously explained, the Valuer was awarded the relevant specific contract to conduct the valuation services needed in the context of the Institution's potential resolution following a reopening of competition of a multiple framework contract for services. The selection of the Valuer following this procurement procedure ensures that it possesses the necessary qualifications, experience, ability, knowledge and resources to carry out the valuations effectively without undue reliance on any relevant public authority or the Institution.
- (105) In particular, the procurement process leading to the conclusion of the multiple framework contract established, based on the information provided by the tenderers (including Deloitte) in response to the call for tenders, that they meet the selection criteria, and in particular that they have sufficient technical and professional capacity

---

<sup>37</sup> This interpretation finds also support in the answer of the European Banking Authority ("EBA") of 28/10/2016 to the Question 2015\_2186 with regard to Valuation 2, where the EBA notes that "[t]he same valuer can prepare the provisional and ex-post definitive valuation. This means that the requirement of independence referred to in Article 36(1) [of Directive 2014/59/EU] will be complied with in both cases, as it has to be complied with for the purposes of ex-post definitive valuation."

<sup>38</sup> See Article 20(9) of Regulation (EU) No 806/2014.

<sup>39</sup> See Valuation 2 Report, Appendix I.

to perform the tasks under the relevant contract, i.e. the valuations provided in Article 20 of Regulation (EU) No 806/2014. In this regard, the tenderers were, among others, requested to provide the SRB with relevant evidence to prove that they fulfil the applicable technical and professional criteria. The Valuer provided all the necessary confirmations and materials.

(106) Moreover, in the procurement process leading to the award of the specific contract to Deloitte, the SRB assessed the professional merit of the proposed team and considered that the proposed team fulfilled the relevant requirements.

(107) Therefore, the SRB concludes that these comments cannot call into question the conclusion that Deloitte fulfils all requirements set out in Article 39 of the Commission Delegated Regulation (EU) 2016/1075.

#### **6.2.1.7. Conclusion regarding the independence of the Valuer**

(108) In light of the assessment of the above comments, 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.

#### **6.2.2. Comments on the content of the Valuation 3 Report**

(109) The Affected Shareholders and Creditors put forward comments in relation to various topics relating to the content of the Valuation 3 Report.

##### **6.2.2.1. Comments on the specific context of the Valuation 3**

(110) As it has been stated above, in performing the Valuation 3 in the context of the Institution's resolution, the Valuer took into account Regulation (EU) No 806/2014 and Commission Delegated Regulation (EU) 2018/344.

(111) Some Affected Shareholders and Creditors **claim that the Commission Delegated Regulation (EU) 2018/344 entered into force on 29 March 2018**, only after the Valuer's fieldwork was concluded on 23 March 2018, and long after the resolution action was taken. Some Affected Shareholders and Creditors also claim that the above Delegated Regulation was endorsed ad-hoc to justify the outcome of the work carried out by the Valuer. As a consequence, they allege that the valuation criteria used by the Valuer would be based on non-objective assumptions.

(112) While, before the entry into force of the above Commission Delegated Regulation (EU) 2018/344, there was no legally binding framework to guide the performance of Valuation 3, the EBA's RTS on valuation after resolution,<sup>40</sup> which were later reflected in the Commission Delegated Regulation (EU) 2018/344,<sup>41</sup> were already adopted on 23 May 2017 (see recital (35) above). Therefore, the EBA's RTS could be relied upon throughout the performance of the Valuation 3, in order to ensure the use of objective criteria. Moreover, at the time of the finalisation of the Valuation 3, the above

<sup>40</sup> See EBA Press release of 23 May 2017 "EBA publishes final technical standards on valuation in resolution" and the Final draft RTS on valuation after resolution of 23 May 2017, EBA/RTS/2017/06 published on the EBA website.

<sup>41</sup> See Recital (7) and (8) of Delegated Regulation (EU) No 2018/344.

Commission Delegated Regulation was already in force. Therefore, these allegations can be disregarded.

- (113) Some Affected Shareholders and Creditors claim that the Valuer based the Valuation 3 assessment on **unaudited and/or unverified financial information provided *inter alia* by the Institution and available prior to the date of resolution.** For this reason, the conclusions of the Valuation 3 would not be reliable and/or credible.
- (114) In this respect, it is noted that Article 20(18)(a) of Regulation (EU) No 806/2014 states that, for the purpose of the Valuation 3, the scenario of normal insolvency proceedings should be considered at the time when the decision on the resolution action was taken. Such approach is also in line with Article 1(1) of the Commission Delegated Regulation (EU) 2018/344, which establishes that “[f]or the purposes of determining the treatment of shareholders and creditors under normal insolvency proceedings, the valuation shall only be based on information about facts and circumstances which existed and could reasonably have been known at the resolution decision date which, had they been known by the valuer, would have affected the measurement of the assets and liabilities of the entity at that date.”
- (115) In light of the above legal framework, the Valuation 3 Report was rightly based on the Institution’s financial information available as of close of business on 6 June 2017 – i.e. the day before the Resolution Date, which was analysed and quality checked. As explained in recital (51) above, when reliable information as at 6 June 2017 was not available, despite all reasonable efforts, the Valuer either used information as at 31 May 2017 for areas where the variations during that 6-day period were not considered material, or used appropriate assumptions or proxies and focused on the most material items in terms of their potential impact on the Affected Shareholders and Creditors. Moreover, the Valuer also relied on financial and non-financial information obtained from public sources, including digital and written information media. All the information provided to the Valuer through the Virtual Data Room has also been taken into account when preparing the Valuation 3 Report (see Section 2 of the Clarification Document and the Important Notice of the Valuation 3 Report).
- (116) Moreover, since audits take place at a specific moment in time during the year, information available at the resolution date (or as close to the resolution date as possible) may not necessarily be audited. However, the financial information stems from the same sources and systems that are subject to these audits. Therefore, the SRB considers that the Valuer appropriately relied on the most recent financial information, as provided by the Institution, which is the legitimate owner and keeper of such information.
- (117) Some Affected Shareholders and Creditors pointed out the **differences between the balance sheet used in the Valuation 3 Report and figures reported to Asociación Española de Banca (“AEB”) at 31 May 2017**, in particular with regard to the value of the loans and receivables. As the Valuer explained in the Clarification Document (Section 5.1.3. thereof), the reduction in the value of loans and receivables between 31 May 2017 and 6 June 2017 is mainly due to the restructuring of the

Institution's Real Estate subsidiaries, which resulted in the conversion of more than EUR 6.6 billion from loans to equity.

- (118) Some Affected Shareholders and Creditors argue that **the outcome of the Valuation 3 Report would not be reliable because it would be based on mere hypotheses**. While the claims of these Affected Shareholders and Creditors are not sufficiently substantiated to call into question the reliability of the Valuation 3 Report, it must be pointed out that a valuation 3 is, by its nature, based on hypotheses given that the relevant entity does not enter normal insolvency proceedings but is instead resolved under the resolution framework. As the Valuer states in its Clarification Document (see 5.1.1. thereof), *"the very nature of [the Valuation 3 Report] is a hypothetical and prospective exercise to estimate the recovery value of [the Institution]'s creditors, for which it is necessary to adopt a series of hypothetical scenarios"*.
- (119) Therefore, the above comments do not render the Valuation 3 Report unreliable. As explained above, there is a clear legal framework and explicit safeguards with respect to the valuation processes in the context of a resolution action. The SRB thus maintains that in light of the above legal framework, the Valuation 3 Report constitutes an appropriate basis for the SRB to adopt its final decision.
- (120) The Affected Creditors and Shareholders in several instances refer to the **differences in the assumptions used in the provisional NCWO estimate in the Valuation 2<sup>42</sup> and in the Valuation 3 Report**, which, nevertheless, led to quite similar outcomes. Regarding any different approach taken in the provisional NCWO estimate and in the Valuation 3 Report, the legal framework clearly recognizes that the provisional NCWO estimate cannot be as precise as the Valuation 3 assessment needs to be for several reasons, among others applicable in this case, the time constraints and the lack of availability of data as close to the date of resolution in the context of the provisional NCWO estimate. Article 20(9) Regulation (EU) No 806/2014 provides specifically that the Valuation 2 shall include an *'estimate of the treatment that each class of shareholders and creditors would have been expected to receive'*. Whereas Article 20(17) Regulation (EU) No 806/2014 requires the valuer to *'determine ... the treatment that shareholder and creditors ... would have received'* in the case of national insolvency procedures (emphasis added). This is further supported by the fact that despite the ex ante performance of a provisional NCWO estimate, the legal framework always requires the performance of a Valuation 3 after the implementation of the resolution action. The mere fact that the provisional NCWO estimate and the Valuation 3 are similar with respect to the outcome but are based on different assumptions cannot be considered in itself as a sufficient proof that the Valuation 3 was not performed in line with the legal requirements.<sup>43</sup> As a consequence, the SRB

---

<sup>42</sup> See Article 20(9) of Regulation (EU) No 806/2014 which provides that "[t]he valuation shall indicate .... *an estimate of the treatment that each class of shareholders and creditors would have been expected to receive, if an entity ... were wound up under normal insolvency proceedings*" (emphasis added).

<sup>43</sup> As regards the appropriateness of the assumptions used in the Valuation 3 Report, please refer to Section 6.2.2.2. et seq. below.

considers that these comments do not show the unreliability of the assessment and the conclusions of the Valuer in the Valuation 3 Report.

(121) Finally, some Affected Creditors and Shareholders refer **to previous insolvency cases in Spain and in other jurisdictions**. In Sections 5.1.6. and 5.3.5. of the Clarification Document, the Valuer noted that while it took into account the Banco Madrid's insolvency proceeding to some extent, the subsequent important changes in national insolvency law (e.g. the changes impacting the duration of such proceedings) do not allow the comparison with previous Spanish cases. In addition, the Valuer considered whether other European liquidation cases could provide insight into the hypothetical liquidation scenario. However, due to the lack of harmonization of the different European insolvency laws, such comparison was considered by the Valuer only of limited value. Moreover, the macroeconomic context, the entity's operations, business and assets may vary greatly across cases and impact the outcome of the valuation under insolvency proceedings. The SRB considers that the Valuer in line with Article 4(3)(c) of the Commission Delegated Regulation (EU) 2018/344 considered information on recent past insolvency cases of similar entities and provided sufficient reasoning on their relevance.

#### **6.2.2.2. Comments on the liquidation scenario**

(122) As indicated in the Valuation 3 Report, the Valuer considered that the opening of normal insolvency proceedings for the Institution on 7 June 2017 would have resulted in an unplanned liquidation.<sup>44</sup> Liquidation under normal insolvency proceedings in Spain would have entailed an accelerated realization of assets, with no minimum binding price,<sup>45</sup> and payment of the net realization to creditors in accordance with the hierarchy established by the national law.

(123) Some Affected Shareholders and Creditors argue that **the relevant counterfactual for the resolution action would not necessarily entail the liquidation of the Institution**, either by claiming that a private sector solution could have been found or that the counterfactual should have been based on the sale of the Institution as a going concern, since the Institution was still operating in the market at the date of the adoption of the Resolution Decision. Consequently, the Institution's sale at its market value should have been taken into account as the relevant counterfactual for the purposes of ensuring compliance with the NCWO principle.

(124) In particular, some Affected Shareholders and Creditors submit that the creditors could have concluded an agreement ("**creditor agreement**"), which would have prevented the liquidation of the Institution. Other Affected Shareholders and Creditors note that the Spanish insolvency proceedings allow for the possibility of a "pre-pack" insolvency, whereby the entity's viable assets are separated and sold as a "going concern". They thus claim that this solution should have been considered by the Valuer when defining the liquidation strategy, as it would have allowed to better preserve the Institution's franchise value.

<sup>44</sup> See Valuation 3 Report, at p 5.

<sup>45</sup> See Article 149.1.1 Spanish Act 22/2003.

(125)The SRB notes that the resolution framework provides that the Valuation 3 shall be carried out ex-post to determine whether Affected Shareholders and Creditors were worse off under resolution than they would have been if the Institution would have been “wound up under normal insolvency proceedings”<sup>46</sup> in the relevant jurisdiction. In particular, as the Valuer notes in the Clarification Document (Section 5.1.5 thereof), the Spanish Law 11/2015 which transposes the BRRD specifically states that valuation of difference in treatment should be performed assuming that the entity has entered into a liquidation proceeding.<sup>47,48</sup>

(126)Without prejudice to the requirements laid down in Regulation (EU) No 806/2014 and national legal frameworks referred to in recital (125), when addressing those comments suggesting that the normal insolvency proceedings would not necessarily end in a liquidation (see Section 5.1.5. of the Clarification Document) in the case of the Institution, the Valuer considered that it would not be possible to complete a sale of business as a going concern (by way of a pre-packaged insolvency process or otherwise) nor arrange a creditor agreement for the following reasons:

- a) Given the liquidity position of the Institution on the Resolution Date, and the ECB’s FOLTF assessment, the Institution could not continue to operate while negotiations were undertaken, leading to significant value destruction. The SRB notes that a letter of the Chief Executive Officer of the Institution, dated 6 June 2017, corroborates the conclusion that the Institution’s liquidity position would not permit it to continue to operate;
- b) The Valuer considers that the banking licence would be revoked, since the conditions for its withdrawal provided under Spanish Law<sup>49</sup> would be satisfied. The banking license is required to accept customer deposits, which are fundamental to the Institution’s ongoing operation and/or its sale as a going concern.

(127)Finally, the Valuer notes in its Clarification Document that the creation of a good bank/bad bank is not considered in the Spanish Act 22/2003 and, in any event, would have required time to be set up which was not available in the circumstances.

(128)On the basis of the above, the SRB concludes that the Valuer provided an appropriate assessment on the liquidation scenario used in the Valuation 3.

### **6.2.2.3. Comments on the liquidation duration**

(129)Some Affected Shareholders and Creditors raised comments as to whether Deloitte adopted a **dynamic scenario**, which is understood as a method that sets different moments of realisation during the liquidation and subsequently establishes a value

---

<sup>46</sup> See Article 15(1)(g) of Regulation (EU) No 806/2014 and Article 74(1) of Directive 2014/59/EU.

<sup>47</sup> See Article 10.1 of Spanish Royal Decree 1012/2015.

<sup>48</sup> As regards the relevant national legal framework for normal insolvency proceedings, Spain has no specific insolvency law for credit institutions. The liquidation process for credit institutions is thus based on the general insolvency proceedings governed by the Spanish Act 22/2003.

<sup>49</sup> In accordance with Article 8 of the Spanish Law 10/2014, the banking license can be revoked, inter alia, due to any of the following conditions: (i) inability to pay funds to depositors or to offer guarantees of being able to fulfil its obligations to creditors; (ii) a judicial decision to open a liquidation phase in an insolvency proceeding.

of the assets based, among others, on the realisation time. Other Affected Shareholders and Creditors provided comments pointing to the view that the established time scenarios for the liquidation as set out in the Valuation 3 were **either too long or too short**, including the opinion that greater recoveries would have been achieved with a longer insolvency scenario.

- (130) With regard to the comments related to the dynamic scenario, the Valuer noted that it assessed three alternative time scenarios (i.e. a liquidation period of 18 months, 3 years, and 7 years). Within each scenario, the Valuer considered the optimal strategy and disposal period to maximise realisations for the different asset classes, according to their underlying nature and liquidity. For example, it was assumed that certain assets, such as cash and demand deposit portfolios and financial assets portfolios, would be realised at the commencement of the liquidation period (Section 5.1.2 of the Clarification Document).
- (131) With regard to the duration of the liquidation period, the Clarification Document (Section 5.3.2.) recalls that the Section 2.2 of the Valuation 3 Report reflects that the position under Spanish insolvency law, following the reforms of 2015, is that a period of 18 months would be the effective maximum for the liquidation of the Institution.<sup>50</sup>
- (132) Nevertheless, given the complexity of the Institution's hypothetical insolvency proceeding, and that a very quick process would lead to market capacity issues, distressed prices and low realisation values, the Valuer also considered two longer liquidation time scenarios than the one legally established by the Spanish Act 22/2003 of 18 months, i.e. a 3-year scenario and a 7-year scenario.
- (133) The Valuer considered that these additional scenarios would enable the Institution's assets to be liquidated more efficiently and with greater recovery rates than under the 18-month scenario, while respecting the principle of also returning value to creditors in a reasonable timeframe. A longer liquidation period than the 7-year scenario would lead to higher liquidation costs, higher management and maintenance costs and would increase uncertainty in relation to the levels of asset realisations. Moreover, the Valuer considered that such longer liquidation period would not be supported by the rationale of the Spanish Act 22/2003 and the interests of senior unsecured creditors.
- (134) On the basis of the above, the SRB concludes that the Valuer provided an appropriate assessment on the liquidation duration and underlying assumptions it used in the Valuation 3.

#### **6.2.2.4. Comments on the Macroeconomic scenario**

- (135) Some Affected Shareholders and Creditors submitted comments concerning the validity of the macroeconomic forecasts used in the Valuation 3 Report, including

---

<sup>50</sup> In accordance with article 153 of the Spanish Act 22/2003 and Transitory provision Third of Law 25/2015, a liquidator can be remunerated only for 12 months with a possible 6 month extension (See Section 5.3.3. of the Clarification Document).

whether reference should have been made to alternative sources and later versions, which showed higher rates of recovery in the Spanish economy.

- (136) As noted in recital (53), the Valuer used the Spring 2017 Economic Forecast by the European Commission, this being the most recent in time prior to the Resolution Date and therefore the most relevant for the hypothetical insolvency scenario. The Valuer also considered other economic forecasts during the valuation, from both public and private institutions, and decided to use the Commission's forecasts based on their timing and independence. In addition, the Valuer has confirmed that other public sources (e.g. Instituto Nacional de Estadística or Banco de España) were also taken into account for some economic hypotheses regarding collateral or foreclosed asset valuation.
- (137) The Valuer noted that any difference between the forecast on the Spanish economy produced by the Commission and the forecasts produced by other public and/or private institutions at the Resolution Date is not significant so as to have the potential to modify the result of the Valuation 3 Report.
- (138) In terms of later revisions of the forecasts, the Valuer looked at the forecasts closest to the Resolution Date. This approach is consistent with the requirement set out under the relevant legal framework for the Valuation 3. In particular, pursuant to Article 20(17) of Regulation (EU) No 806/2014, the Valuation Date is to be the date of resolution. Moreover, Article 1 of the Commission Delegated Regulation (EU) 2018/344 requires that the Valuation 3 shall be based on information about facts and circumstances which existed and could reasonably have been known as of the resolution decision date.
- (139) The SRB thus considers that the comments on the macroeconomic scenario do not call into question the reliability of the assessment by the independent Valuer.

#### **6.2.2.5. Comments on Loans and Receivables**

- (140) Some Affected Shareholders and Creditors commented on the approach taken by the Valuer in relation to the valuation of loans and receivables. Notably, with regard to the run-off period of the **performing loans ("PL") portfolio**, some Affected Shareholders and Creditors suggested that the prepayment assumptions for performing loans were overly aggressive and resulted in a material understatement of the interest received on the book in the liquidation period.
- (141) As reported in the Clarification Document (see Section 5.4.1. therein), the Valuer assumed that the PL portfolio would be run-off until the end of the liquidation period, at which point any remaining portion would be sold. In this regard, the Valuer also noted that the estimates of the amounts collected during the run-off period reflect, *inter alia*, its assumptions on the evolution of the prepayment rate and new defaults. In particular, the Valuer considered that while the level of interest received on the book post liquidation would tend to increase the overall recoveries, higher prepayments in a liquidation scenario would reduce the overall amount of interest received. Similarly, increased levels of defaults would also reduce the overall recoveries.



- (142) With regard to the Valuer's **prepayment assumptions** for performing loans, and specifically for loans to corporate and mortgage customers, some Affected Shareholders and Creditors alleged that such loans appeared unduly high in comparison with a going-concern scenario, and consequently, that the Valuer was understating the level of interest receivables on the book. The Valuer has provided appropriate arguments on the foundations of its assumptions concerning the increased level of loan prepayment (see Section 5.4.2. of the Clarification Document), including, *inter alia*, the consideration of the Spanish banking business models, the relative rates of interest (loan pricing) and switching costs, and the attractiveness of the customers to alternative providers.
- (143) Moreover, some Affected Shareholders and Creditors pointed out to the allegedly inappropriate application of **IFRS 9 methodology** to estimate recoveries for the PL portfolio, and, in particular, that this methodology was not appropriate to estimate cashflows in liquidation. The Valuer explained that it adopted the discounted cashflow approach when performing the valuation of loans and receivables, reflecting the contractual cashflows, including interest and amortisations, over the liquidation period. The Valuer made a number of assumptions and used proxies based on the most recent data/rates available, as detailed in section 5.4.3. of the Clarification Document.
- (144) With regard to the **non-performing loans ("NPL") portfolio**, some Affected Shareholders and Creditors' also requested further clarifications regarding the amount reclassified. The Valuer explained that the total NPL exposure before the **reclassification** amounted to EUR 19,055 million and to EUR 20,200 million after this reclassification. Further, after the reclassification, the total Net Book Value of the NPLs, represents 25.3% of Gross Book Value.
- (145) With respect to the **NPL portfolio disposal timeline**, some Affected Shareholders and Creditors submitted that the timetable proposed for the disposal of the NPL portfolio was incompatible with a strategy designed to maximise value – in particular, it was argued that greater recoveries would have resulted from a disposal and work-out over a 7-year timeline and/or that a "hybrid" realisation strategy for different, smaller and targeted portfolios should have been considered.
- (146) The Valuer indicated that longer timeframes were considered but that the 18-month time horizon was still found to be the most suitable. Notably, the Valuer concluded that in case of a longer timeframe greater recoveries would be uncertain, while it would entail higher costs, increased reluctance of defaulted borrowers to engage in discussions with an insolvent bank, and an increased macroeconomic risk. It was therefore concluded that a relatively short-term sale was ultimately more beneficial and would not result in buyer capacity issues impacting the level of realisations achieved. As regards the hybrid realisation strategy options, the Valuer concluded that notwithstanding the variety of strategic options available, it is unlikely that the pricing achievable on the book would have been materially different from that set out in the Valuation 3 Report (see Section 5.4.5. of the Clarification Document).

(147) Finally, some comments also referred to the **discount rates** used in the NPL and performing loans (“**PLs**”) valuation. Specifically, Affected Shareholders and Creditors argued that the discount rates were arbitrary. Certain Affected Shareholders and Creditors suggest considering alternative benchmarks on the basis of a comparison with other recent sales of PLs in the market. In Section 5.4.6. of the Clarification Document, the Valuer noted, however, that, as set out in the Valuation 3 Report, specific and separate assumptions were used for secured NPL and unsecured NPL during the valuation process. The discount rate would reflect the likely acquirer’s required rate of return for each asset class, as well as the quality of available data (amongst other factors), and as such, it may vary considerably between different portfolios. In this specific case, the Valuer further explained that when developing the assumptions for the discount rate applicable to:

- a. the NPL, the Valuer decided to apply a discount rate slightly above the levels that were observable in the Spanish NPL market in 2017. This was done to reflect the likely lower quality of the processes and information provided to potential buyers, and the lack of representations and warranties on a sale out of liquidation;
- b. the disposal of the rump PL, the Valuer considered historical corporate and mortgage securitisations and the average level of yield demanded in the Spanish market in order to set a relevant benchmark.

(148) Based on the above, the SRB concludes that the Valuer provided an appropriate assessment and valuation of loans and receivables and underlying assumptions it used in the Valuation 3 in line with Article 4 of the Commission Delegated Regulation (EU) 2018/344.

#### **6.2.2.6. Comments on Real Estate assets**

(149) Firstly, the details of the valuation methodology for real estate assets, including those held by Real Estate Owned subsidiaries were set out in Section 4.2 of the Valuation 3 Report.

(150) Some Affected Shareholders and Creditors raised concerns about **the suitability of the valuation approach and valuation model** to estimate realisations of real estate assets in a liquidation scenario (see Section 5.5.1. of the Clarification Document). In particular, with regard to:

- a. the comment that the Valuer should have followed an asset-by-asset approach, the Valuer noted that it followed a statistical model, which adjusts the latest appraisal value of each asset to a current value at the Resolution Date by considering a number of relevant factors, and that such approach was complemented by a representative asset-by-asset challenge. The Valuer confirmed that this approach is consistent with the market practice for the valuation of banks’ real estate exposure and what a liquidator would do in such circumstances;

- b. the comment that the Valuer should have used the ECB's bottom-up analyses, the Valuer noted that such scenario is not considered in the Valuation 3 Report, since the former analyses refer to a going concern scenario;
- c. the comment that the Valuer should have used the haircuts applied under Circular 04/2016, as reduced under Circular 4/2017, the Valuer noted that these haircuts were calibrated by Banco de España considering the real estate commercial experience of all the Spanish Financial sector and not only the Institution. The Valuer thus considered its approach more appropriate, since it was based on the estimation of the individual real estate asset's market value;
- d. the comment concerning the use by the Valuer of a massive portfolio sales approach, the Valuer noted that this was the optimum approach to be followed in a liquidation scenario in the defined periods, taking into account the nature and size of the Institution's real estate asset portfolio;
- e. the comment concerning the use of the Statistical/Automatic Valuation Model, the Valuer noted that such model has been used in the valuation of a large volume of Spanish Real Estate assets owned by financial entities and Investment Funds, and was also validated by the representative asset-by-asset challenge mentioned above.

(151) Some Affected Shareholders and Creditors raised the argument that the **Valuer did not take into account the real estate market recovery**. In this regard, in Section 5.5.2. of the Clarification Document, the Valuer noted that its analysis was based on information available or which could have been reasonably obtained by close of business on 6 June 2017 (see also recitals (114) and (115)). Therefore, the Valuer took into account the economic forecasts of the second quarter of 2017. The Real Estate asset valuation thus included the market recovery recorded from 2015 to June 2017.

(152) Some Affected Shareholders and Creditors expressed their **disagreement with the assumed disposal period**. In this regard, in Section 5.5.3. of the Clarification Document, the Valuer explained that the range provided for the realisation value of this portfolio is deemed reasonable from a market perspective. In particular, the Valuer established the optimum disposal period for the sale of each real estate asset based on the specific typology and location of the individual asset and it adjusted it when it was shorter than the duration of the respective liquidation scenario.

(153) With regard to the comments raised by some Affected Shareholders and Creditors in relation to the **impairment coverage ratio for real estate assets**, in Section 5.5.4. of the Clarification Document, the Valuer confirmed that impairment coverages were considered when preparing the Valuation 3 Report.

(154) Some Affected Shareholders and Creditors argued that the Valuer's proposed **liquidation strategy for Real Estate subsidiaries** was inappropriate and inconsistent with information detailed elsewhere in the Valuation 3, including as regards own use properties/foreclosed properties held directly by the Institution. Notably, the Affected Shareholders and Creditors alleged that realisations would be

maximised through an orderly disposal of assets across the entire liquidation period and that the 18-month period was unnecessarily accelerated, resulting in a significant understatement of recoveries.

- (155) In particular, as noted in Section 5.3.4. of the Clarification Document, for real estate subsidiaries, the Valuer considered that the going concern sales of the Real Estate subsidiaries within the first 18 months of the liquidation was the optimum realisation strategy. Considering the Real Estate subsidiaries as ongoing companies and not simple property owners allows these subsidiaries to be realised, once sold, in a quicker and more orderly way, without distressed property prices or saturating market capacity. While the Valuer considered alternative strategies, including for the Institution to retain the entities and work out the assets itself or to phase the disposals over a longer period, such strategies would entail a more capital-intensive and complex process and additional costs and risks (which the Liquidator would be reluctant to accept), without certainty to achieve higher recoveries.
- (156) Based on the above, the SRB concludes that the Valuer provided an appropriate assessment and valuation of real estate assets and underlying assumptions it used in the Valuation 3 in line with Article 4 of the Commission Delegated Regulation (EU) 2018/344.

#### **6.2.2.7. Comments on tax assets**

- (157) Some Affected Shareholders and Creditors raised comments relating to the scenario of the valuation of the tax assets, some of them suggesting that alternative approaches could have been taken with regard to Protected Deferred Tax Assets. In this regard, the Valuer noted that the valuation was conducted under a liquidation scenario and not under a "sale of business as a going concern" scenario to another banking group. In light of this scenario, the Valuer included in the estimated realisation value all Protected Deferred Tax Assets (EUR 2,031 million), while Non-Protected Deferred Tax Assets were taken into account only to the extent appropriate to set off against future taxable profits - as such this is not applicable to a bank in liquidation. In addition, Non-Protected Deferred Tax Assets cannot be sold separately and, if not utilised before the dissolution of the Institution, would be lost (see Section 4.3 of the Valuation 3 Report and Section 5.6. of the Clarification Document).
- (158) The SRB thus considers that the Valuer provided an appropriate assessment and valuation of tax assets and underlying assumptions it used in Valuation 3.

#### **6.2.2.8. Comments on joint ventures, associates and subsidiaries assets**

- (159) Some Affected Shareholders and Creditors raised comments regarding the Valuer's approach to determining the **impact of the Institution's liquidation on other entities within the Group ("Investees"), the completeness of its analysis, and the potential capital gains of selling certain Investees.**
- (160) As regards the comments requesting further clarity on the Valuer's approach regarding the impact of the Institution's liquidation on the Investees, and questioning the completeness of the Valuer's analysis with regard to the value flowing back to the Institution from the Investees, the Valuer noted that it analysed the impact of

the Institution's liquidation on the respective Investees, based on their financial and operational linkages, taking into account subordination of amounts due from the Institution and other group companies, and liquidity issues, which would not be able to be addressed in the financial markets. In light of the above and the asset value of the Investees at the Resolution Date, the Valuer determined whether each Investee would enter into insolvency proceeding or would continue operating in case of the Institution's liquidation.<sup>51</sup> Moreover, the Valuer reiterated that it included all Investees when calculating the realisations for the Institution (either in terms of a recovery of intragroup receivables or in terms of equity held by the Institution).

(161) Certain comments mentioned existing offers for some of the Investees. In this regard, the Valuer noted that the Valuation 3 Report implies potential capital gains for several investments and that for those entities for which an offer or price indication had been received prior to resolution, no discount to such value was applied.

(162) Some Affected Shareholders and Creditors noted that the "**Preferred Securities**" in **Popular Capital SA** should have received different treatment and thus the holders of such instruments would have been preferred creditors in the liquidation of Banco Popular and questioned if Popular Capital had been considered in the Valuation 3 Report. In Section 5.7.2. of the Clarification Document, the Valuer noted that Popular Capital was considered in the Valuation 3 Report and confirmed that the recovery value for Popular Capital's bondholders would be zero. This conclusion was based on the following main elements:

- a. The Preferred Securities issued by Popular Capital were recorded as Tier 1 capital instruments by the Institution and as set out in the relevant prospectus;
- b. The prospectus set out that the proceeds would be deposited on a permanent basis with the Institution or with another credit entity of the Group and would be available to absorb losses of the Group once shareholders' equity had been reduced to zero;
- c. The prospectus noted that in case of liquidation or winding up of the Institution, Popular Capital should be liquidated and the holders of the Preferred Securities would be entitled to receive only the Liquidation Distribution for each preferred Security, which should not exceed that which would have been paid from the Institution's assets had the Preferred Securities been issued by the Institution;
- d. Popular Capital would be forced into an insolvency proceeding<sup>52</sup> and the total recoverability estimated for its assets would be zero.

(163) Some Affected Shareholders and Creditors raised questions regarding the **ranking of intragroup debt in the creditor hierarchy**. In Section 5.7.3. of the Clarification Document, the Valuer noted that under the Spanish Act 22/2003, intragroup claims are subordinated (only being senior to equity). Therefore, if a group entity enters into an insolvency proceeding due to the Institution's liquidation, all of the

---

<sup>51</sup> For the determination for each Investee, see Appendix III of the Valuation 3 Report.  
<sup>52</sup> See also Appendix III of the Valuation 3 Report.

Institution's rights against these insolvent intra-group companies will be subordinated and their recovery value is likely to be significantly impaired.

- (164) Some Affected Shareholders and Creditors raised comments regarding **the relative levels of recoveries for three banking entities, i.e. Banca Privada, Banco Pastor and Banco Popular Portugal**. In particular, some Affected Shareholders and Creditors argued that the application of a consistent level of recovery on loans and receivables across the Group would have implied a higher recovery on these three banking entities and requested further clarification as to the differences between these entities and the Institution. In Section 5.7.4. of the Clarification Document, the Valuer noted that all three entities would enter into insolvency proceedings, reflecting asset impairment or liquidity issues. The relative levels of recoveries would vary depending on the underlying assets of each entity. Due to their high level of intragroup positions (on the asset side of the balance sheet), both Banco Pastor and Banca Privada would see their overall level of recoveries substantially reduced. In the case of Banco Popular Portugal, assets predominantly comprise amounts due from third parties. Therefore, the latter's recovery range is higher, and thus overall asset realisations are sufficient to repay part of its intragroup position due to the Institution.
- (165) Some Affected Shareholders and Creditors raised comments relating to the termination rights exercisable by third party partners in relation to Joint Venture ("JV") agreements. In Section 5.7.5. of the Clarification Document, the Valuer noted that it assumed that the Institution's part would be sold to the JV partner and did not estimate the potential costs to the Institution associated with the termination of existing JV agreements, which could further lower the recoveries for the Institution's creditors.
- (166) Some Affected Shareholders and Creditors raised concerns regarding the **sources used for the calculation of the multipliers** used in the market value approach. In Section 5.7.6. of the Clarification Document, the Valuer noted that its estimates of the recoverable amount are based on (as applicable): (i) third party valuation reports; (ii) offers or price indications received; (iii) transactions already announced; (iv) price of put / call options included in investment agreements; and/or, (v) other valuation techniques. Moreover, in cases where market multiples were applied, the sources used to calculate the multipliers were obtained from generally accepted information providers.
- (167) Based on the above, the SRB considers that the Valuer provided an appropriate assessment and valuation relating to joint ventures, associates and subsidiaries assets and the underlying assumptions it used in Valuation 3.

#### 6.2.2.9. Comments on intangible assets

- (168) Some Affected Shareholders and Creditors also submitted that the Institution's intangible assets should have had a **higher recovery value** than estimated in the Valuation 3 Report.
- (169) The intangible assets on the Institution's balance sheet at the Resolution date comprised goodwill, trademarks, computer software, and customer relationships.
- (170) Since the Valuer operated under a liquidation scenario, and given the nature of the intangible assets, the recoverable amount of these assets would not be affected by the length of the liquidation period. The Valuer concluded that none of these assets has any material realisable value in their own right. Furthermore, in Section 5.8.1. of the Clarification Document, the Valuer provided additional comments and explanations for each type of intangible asset.
- (171) The SRB thus considers that the Valuer provided an appropriate assessment and valuation of intangible assets and the underlying assumptions it used in Valuation 3.

#### 6.2.2.10. Comments on fixed income and derivatives

- (172) Some Affected Shareholders and Creditors submitted comments in relation to equity, fixed income assets and derivatives. More specifically, the comments related to the **valuation methodology and adjustments** made to the fixed income asset portfolio and whether downward adjustments had been applied to fixed income assets included in loans and receivables.
- (173) The Valuer clarified that in performing the valuation with respect to the equity, fixed income and derivative portfolios, it used market standard bases for valuation assuming an orderly exit without adjusting these market values for liquidation-specific challenges, given the difficulties in estimating their negative impacts. Therefore, the Valuation 3 Report is unlikely to undervalue the realisations in liquidation. In addition, the main adjustment between the book value and the amount estimated to be realised in liquidation using fair value as a proxy is also explained in section 5.9.1. of the Clarification Document.
- (174) Some of the Affected Shareholders and Creditors suggested that the methodology applied by the Valuer led to an undervaluation of the so-called "**level 3 assets**" and **of the Institution's derivatives**. As regards level 3 assets (with a total book value of EUR 331 million), which do not have an observable market price, the valuation was based on market standard methodologies and adjusted based on the Valuer's modelling approach and inputs, which differ from those adopted by the Institution. Further, as regards the Institution's derivatives, the Valuer's calculation methodology and assumptions, their compliance with the applicable technical valuation standards, and the results obtained are detailed in the Valuation 3 Report (see section 4.7 of the Clarification document).
- (175) Based on the above, the SRB considers that the Valuer provided an appropriate assessment and valuation relating to fixed income assets and derivatives as well as the underlying assumptions it used in the Valuation 3.

#### **6.2.2.11. Comments on other assets**

(176)The Comments submitted by Affected Shareholders and Creditors in relation to “Other Assets” focussed on the valuation approach and on requesting further clarifications of the resulting values.

(177)In Section 5.10. of the Clarification Document, the Value explained that due to the different nature and typology of the assets within the so-called “other assets” portfolio, it considered that the adoption of a single valuation approach was inappropriate. Therefore, the Valuer analysed each line item individually and estimated each recovery rate based on the available information and the underlying nature of the assets. The SRB thus concludes that the Valuer provided an appropriate valuation approach relating to other assets.

#### **6.2.2.12. Comments on legal contingencies**

(178)Some Affected Shareholders and Creditors submitted comments relating to the Institution’s legal contingencies. More specifically, the comments received related to the **level of information** provided by the Institution and whether the “sources of uncertainty”, as set out in the Valuation 3 Report, and the noted unavailability of certain information surrounding contingent claims, affected the Valuer’s conclusions. In section 5.11.1. of the Clarification Document, the Valuer explained that the level of information available was sufficient to reach a conclusion. The Valuer took into account all the relevant information available at the time and discussed with the Institution’s legal team whether the initial estimates should be revised and/or additional claims could be raised in the event of liquidation. It ultimately concluded that based on its experience, a hypothetical liquidation of the Institution was likely to lead to a significant increase in the level of claims.

(179)In addition, some Affected Shareholders and Creditors raised comments related to the 2012 capital increase and, in particular, that the claims on the 2012 capital increase were highly unlikely given the time passed. However, as noted in Section 5.11.2 of the Clarification Document, the Valuer considered that, while potentially less likely compared to the claims on the 2016 capital increase, the possibility of such claims could not be entirely ruled out. In particular, according to the Valuer, legal claims regarding the Institution’s 2012 capital increase could arise in relation to potential errors or omissions in the original capital increase prospectus. This possibility could not be ruled out because the statute of limitations had not yet elapsed. Therefore, the Valuer concluded that although claims on the 2012 capital increase were highly unlikely given the time passed, they could not be excluded.

(180)Some Affected Shareholders and Creditors also requested further explanations on:

- (i) the distinct categories of potential legal exposure and litigation costs assumed for the Institution: the Valuer provided an individual explanation and an assessment with respect to each category (i.e., floor clauses, mandatorily convertible notes, mortgage loan expenses, capital increases and real estate development bank warranties);



- (ii) the comparison to the level of provisions made by the Institution in its financial statements: in Section 5.11.3 of the Clarification Document, the Valuer clarified that the accounting criteria followed by the Institution for the calculation of the provisions of legal contingencies on a going concern basis do not apply in the context of insolvency proceedings;
- (iii) the ranking of claims in relation to the 2012 and 2016 capital increases and differences of hierarchy between the different types of plaintiffs: in Section 5.11.4 of the Clarification document, the Valuer noted that it considered the investor profile, the shareholding structure provided by the Institution, the shares held by the board of Directors, and the elapsed time. Hence, the Valuer clarified that it excluded from the perimeter the percentage of shares owned by the Institution's Directors and by shareholders holding more than 5% of the Institution's equity.

#### **6.2.2.13. Comments on liquidation costs**

- (181) With regard to the comments suggesting an **overestimation of the liquidation costs**, in Section 5.12.1. of the Clarification Document, the Valuer referred to the four main categories of costs that would arise in case of the Institution's liquidation, i.e. liquidators' fees and costs, employee-related costs, contract termination costs, and operating costs.<sup>53</sup>
- (182) With regard to the comments suggesting an **overestimation of lawyer's and liquidator's remuneration**, in Section 5.12.2. of the Clarification Document, the Valuer stated that the lawyer's remuneration was calculated using a scale from the guidelines approved by the Lawyers' Bar Association, which is based on the total amount of the debtor's liabilities. As regards the liquidator's remuneration, the Valuer stated that reflecting the size of the Institution and the complexity of its business and group structure, the judge would reasonably approve a higher remuneration exceeding the limit set out in the Law and for the maximum period of 18 months.
- (183) With regard to the comments relating to the **level of employee-related costs and operating expenses** in the liquidation scenario, in Section 5.12.3. of the Clarification Document, the Valuer noted that the employee-related costs and other operating costs for the liquidation period were adjusted (significantly downwards) to reflect both the fact that under this scenario the Institution would no longer be a functioning bank and the cost of the redundancy exercise.
- (184) Based on the above, the SRB considers that the Valuer provided an appropriate assessment of liquidation costs as well as on the underlying assumptions it used in Valuation 3.

---

<sup>53</sup> For further information, see Section 4.8 of the Valuation 3 Report.

#### **6.2.2.14. Comments on shareholders, creditors and deposit guarantee scheme hierarchy**

- (185) Some Affected Shareholders and Creditors requested further clarity around the **different levels of the hierarchy under Spanish insolvency law**, specifically in terms of calculating the aggregate assets and aggregate liabilities. In Section 5.13.1. of the Clarification Document, the Valuer informed that the information requested by the Affected Shareholders and Creditors concerning total assets and liabilities as well as on the insolvency hierarchy can be found in Sections 3.4, 4 and 5 of the Valuation 3 Report for the creditor hierarchy, the value of the assets and the realisation of assets respectively.
- (186) Some Affected Shareholders and creditors argued that subordinated creditors would incur a greater loss compared to shareholders due to their loss of unpaid coupons. In Section 5.13.2. of the Clarification Document, the Valuer stated that both the nominal amount and unpaid coupons are subordinated credits and reiterated that shareholders are ranked behind subordinated bondholders.
- (187) Some Affected Shareholders and Creditors raised concerns about the treatment of the subordinated bond with ISIN code ES0213790001 in case of the Institution's liquidation. The Valuer reiterated that in such scenario this bond would be classified in the subordinated claims class and, within that group, as Additional Tier 1/Tier 2.
- (188) With regard to comments on non-intragroup interbank deposits, referred to in the Valuation 3 Report as institutional non-covered deposits, these were classified in the creditor hierarchy section of unsecured creditors, as ordinary claims.
- (189) Regarding comments surrounding the position in relation to post liquidation interest, the Valuer clarified that, according to the Spanish Act 22/2003, unsecured claims will not accrue interest after the liquidation date. In the case of secured claims, interest will be accrued and paid out of secured asset realisations (but clearly limited to the realisation value of their pledged asset).
- (190) Based on the above, the above comments do not call into question the reliability of the assessment by the Valuer.

#### **6.2.2.15. Conclusion regarding the Valuation 3 Report**

- (191) In Section 5 of 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 the Valuer, the Valuer 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. Taking this confirmation into account and based on the conclusions drawn in Section 6.2.2, the SRB considers that the Valuation 3 Report is an appropriate basis for the SRB to adopt this Decision.

### **7. Conclusion**

- (192) It follows from the Valuation 3 Report, in combination with the Clarification Document and the conclusions drawn in Section 6.2, 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 Resolution Date.

HAS DECIDED AS FOLLOWS:

*Article 1*  
**Valuation**

For the purposes of determining 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, the valuation of difference in treatment in resolution pursuant to Article 20(16) of Regulation (EU) No 806/2014 shall be as set out in Annex I to this Decision, in conjunction with Deloitte's clarification document as set out in Annex II to this Decision.

*Article 2*  
**Compensation**

The shareholders and creditors in respect of which the resolution actions concerning Banco Popular Español S.A. have been effected shall not be entitled to compensation from the Single Resolution Fund in accordance with Article 76(1)(e) of Regulation (EU) No 806/2014.

*Article 3*  
**Addressee of the Decision**

This Decision is addressed to FROB, in its capacity as National Resolution Authority, within the meaning of Article 3(1)(3) of Regulation (EU) No 806/2014.

*For the Single Resolution Board*

*The Chair*  
*Elke König*

**ANNEXES**

---

ANNEX I - VALUATION 3 REPORT  
ANNEX II - CLARIFICATION DOCUMENT