

## Decision in case OI/1/2018/AMF on the Single Resolution Board's handling of requests for access to documents from shareholders of the Spanish bank Banco Popular

Decision

**Case OI/1/2018/AMF - Opened on 22/03/2018 - Decision on 16/07/2018 - Institution concerned** Single Resolution Board ( Dealt with by a Court ) |

The case concerned the requests made by former shareholders of the Spanish bank Banco Popular to be granted privileged access to the documents related to the resolution of the bank. The former shareholders considered that they were subjects of the Single Resolution Board's decision to put Banco Popular under resolution and therefore entitled to wider access to documents than the public in general.

During the course of the Ombudsman's inquiry, the Single Resolution Board informed her that the question of whether the former shareholders have a right to privileged access to the documents concerned is being considered by the EU General Court. The rules governing the work of the Ombudsman thus require her to close her inquiry without further action.

### Background to the complaint

1. On 7 June 2017, the Single Resolution Board (hereinafter, "SRB") decided to put *Banco Popular* into resolution and it adopted a resolution scheme [1] .
2. In February 2018, the **SRB published [2] non-confidential versions of the documents related to the resolution of *Banco Popular* .**
3. Also in February 2018, the Ombudsman received many complaints from former shareholders of *Banco Popular* about the SRB not having granted them privileged access to the documents related to the resolution of *Banco Popular* , that is, wider access to documents than that provided for under the EU's general rules on public access to documents [3] . The former shareholders considered that they had a right to such privileged access as " *subjects of the Board's decision*" under article 90.4 of Regulation 806/2016 [4] .



## The inquiry

4. For the sake of efficiency, the Ombudsman opened a complaint-based own initiative inquiry on how the SRB had handled the complainants' requests, made as persons subject the Board's decision, to be granted access to the documents related to the resolution of *Banco Popular* .
5. In the course of the inquiry, the Ombudsman met with the services of the SRB in April 2018.

## The Ombudsman's assessment

6. During the meeting in April 2018, the SRB informed the Ombudsman that the question, of whether the former shareholders of *Banco Popular* have a right to privileged access to the documents related to the resolution, is under consideration by the EU General Court in case T-16/18 [5] . The Ombudsman has verified that this information is accurate.
7. In accordance with article 228 TFEU [6] and article 2.7 of the Statute of the European Ombudsman [7] , **the Ombudsman may not examine complaints where the alleged facts are or have been the subject of legal proceedings** .

## Conclusion

Based on the above, the Ombudsman closes this case without further action.

The Single Resolution Board will be informed of this decision as will the persons whose complaints prompted the own initiative inquiry .

Emily O'Reilly

European Ombudsman

Strasbourg, 16/07/2018

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

[2] <https://srb.europa.eu/en/node/483> [Link]

[3] see Regulation 1049/2001 **of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents**



[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2001.145.01.0043.01.ENG&toc=OJ:L:2001:145:T](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2001.145.01.0043.01.ENG&toc=OJ:L:2001:145:T)  
[Link]

[4] Article 90.4 “ *Persons who are the subject of the Board's decisions shall be entitled to have access to the Board's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information or internal preparatory documents of the Board .*”

[5]

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=199982&pageIndex=0&doclang=ES&mode=req&d>  
[Link]

[6] Article 228 TFEU “[...] *the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, **except where the alleged facts are or have been the subject of legal proceedings** [...]*”

[7] <https://www.ombudsman.europa.eu/en/resources/statute.faces> [Link]