European Parliament
2014-2019

Committee on Petitions

28.3.2018

NOTICE TO MEMBERS

Subject: Petition No 0731/2017 by Francisco Ventura San Juan (Spanish) on his investment in Banco Popular shares

1. Summary of petition

The petitioner complains that in June 2017 he purchased a package of shares from the Banco Popular, which subsequently failed and was repurchased by the Banco de Santander, meaning that his shares then became worthless.

2. Admissibility

Declared admissible on 30 November 2017. Information requested from Commission under Rule 216(6).

3. **Commission reply**, received on 28 March 2018

The petitioner is a Spanish citizen who invested in shares of Banco Popular Español S.A. (BPE), which was put into resolution in June 2017. In substance, the petitioner's claims are the following:

a) Lack of notification and information: the petitioner was not notified personally of the write-down of his shares and only learned about the resolution from the media.

b) Compensation for losses: the petitioner requests the European Parliament to urge the European institutions to compensate him fully for the economic losses he suffered as a result of the write-down of his shares.

c) Violation of the right to property: the petitioner claims a violation of his right to property under Article 17 of the Charter of Fundamental Rights of the European Union (CFREU)

The Commission's observations

As a preliminary observation, the Commission notes that certain issues raised by the petitioner are currently subject to litigation in the Union courts, where various actions were lodged against the SRB and the Commission.

a) Lack of notification and information:

Article 41(2) of the CFREU provides that the right to good administration includes, *inter alia*, the right of every person to be heard before any individual measure which would affect him adversely is taken. The resolution action and the write-down and conversion powers did not target any individuals, such as specific shareholders or bondholders. Instead, the use of those powers concerned categories of securities identified only by their ISIN number and nominal value in EUR. Those securities were BPE's share capital and outstanding bonds that qualified as AT1 and T2 capital. The write-down and conversion action on these capital instruments were not decisions with respect to the legal situation of persons or undertakings but decisions *ad rem* relating to the status of such instruments, irrespective of whoever holds them.

In addition, even if the use of the resolution powers were considered to be a measure affecting individuals, under Article 51(2) of the CFREU, restrictions may be imposed on fundamental rights, including the right to be heard, provided that the restrictions meet objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate interference. In the context of resolution, the choice of the Union co-legislators not to give shareholders and creditors advance notice before the adoption of a resolution decision is necessary and proportionate to the objectives pursued. Article 18(7) of Regulation (EU) No 806/2014[1] (SRMR) limits the period for the Commission to endorse a resolution scheme proposed by the SRB to a maximum of 24 hours. That brief timeframe necessarily excludes any consultation processes that would jeopardise the swift reactions required by the resolution authorities. Suspending resolution procedures to solicit the views of shareholders and bondholders would also be detrimental to the intended aim of safeguarding financial stability across the Union. A delay caused by granting the petitioner a right to advance notice would imperil the effectiveness of resolution actions, which must be adopted and implemented within hours. The absence of an advance notice is therefore lawful, not only during the Commission's scrutiny period, but also in the preparatory phase carried out by the SRB.

As regards the notification of the resolution action after the event, all institutions involved communicated immediately and publicly on the resolution procedures. The SRB published a press release[2] on its website to inform about the resolution proceedings for BPE, including a summary[3] of the effects of the resolution action. Press releases by the Commission[4] and the ECB[5] were likewise published on their respective websites. The Spanish national resolution

[1] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, OJ L 225, 30.7.2014, p. 1–90.
[2] https://srb.europa.eu/en/node/315 (last accessed on 29 January 2018).
[3] https://srb.europa.eu/sites/srbsite/files/note_summarising_effects_07062017.pdf (last accessed on 29 January 2018).
[4] http://europa.eu/rapid/press-release_IP-17-1556_en.htm (last accessed on 29 January 2018).
[5] https://www.bankingsupervision.europa.eu/press/pr/date/2017/html/ssm.pr170607.en.html (last accessed on 29 January 2018).

authority (FROB) published a document[1] on the resolution of BPE, which includes a detailed section on the execution of the powers to write down and convert capital instruments. Finally, the Commission decision endorsing the resolution scheme and a notice of the resolution scheme adopted by the SRB were also published in the Official Journal.[2] The Commission is therefore of the opinion that all shareholders and creditors were made aware without delay of the effects of the resolution through the public communications outlined above.

Notwithstanding the foregoing, the SRB prepared a non-confidential version of the Valuation Report made by an independent expert and of certain other documents related to the resolution of BPE, following decisions by the SRB's Appeal Panel. These non-confidential versions were published on the SRB's website on 2 February.

b) Compensation for losses:

The Commission would like to clarify that the resolution process consists of several steps and that the assessment of any potential compensation for former shareholders and creditors of a resolved bank is foreseen only at a later stage of the process. Resolution actions under the SRMR and the BRRD are carried out in accordance with the "no-creditor-worse-off" principle, which means that no former shareholder or creditor in the resolved bank may suffer greater losses than he or she would have in the case of ordinary insolvency proceedings. For this purpose, the SRB is currently carrying out the required no-creditor-worse-off valuation under Article 20(16) SRMR. This valuation is distinct from the valuation used to exercise the powers to write down and convert relevant capital instruments, and the results are currently pending.

c) Violation of the right to property:

Contrary to the submission of the petitioner, his right to property under Article 17 of the CFREU was not breached as a result of the resolution. It must be noted that the duty to provide fair compensation in good time for loss of property is implemented through the duty to provide adequate compensation, as appropriate, in line with the 'no creditor worse off' principle. Article 20(16) SRMR obliges the SRB to ensure that a valuation is carried out by an independent expert as soon as possible after the resolution action has been effected to assess "where shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings". Such an ex-post valuation is currently being prepared.

Moreover, it should be kept in mind that the right to property guaranteed by Article 17 CFREU is not absolute. Under Article 52(1) of the CFREU, restrictions may be imposed on the exercise of the right to property, provided that they genuinely meet objectives of general interest and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right guaranteed. The Court of Justice held that one objective of general interest pursued by the Union which can justify restrictions on property rights is that of ensuring the stability of the banking system of the euro area as a whole. The Court also confirmed that financial services play a central role in the economy of

[1] http://www.frob.es/en/Lists/Contenidos/Attachments/419/ProyectodeAcuerdoreducido_EN_v1.pdf (last accessed on 29 January 2018).
[2] See OJ L 178, 11.7.2017, p. 15–15 and OJ C 222, 11.7.2017, p. 3–3.

the Union and that if there is an absence of financial stability it can have spill-over effects in other sectors of the economy. If the resolution decision had not been adopted, the petitioner would have been exposed to the imminent risk of financial losses, since BPE would have to be placed into liquidation had it not been put into resolution. The resolution decision does not constitute a disproportionate and intolerable interference impairing the very substance of the right to property, since the petitioner was in any event exposed to the imminent risk of financial losses if BPE had been put into liquidation.

Conclusion

The Commission considers that the information provided by the petitioner does not show any infringement of Union law.