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# EALE conference

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The experience and case law of the Appeal Panel of the SRB

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# 1. Introduction

- Set up of the Appeal Panel;
- Decision making power of the Appeal Panel;
- Rules of Procedure of the Appeal Panel;
- Status of the Appeal Panel;
- Support to the Appeal Panel;
- Cases that have been brought before the Appeal Panel

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## 2. Set up of the Appeal Panel

The Appeal Panel is established by the Board of the SRB in accordance with Art. 85(1) SRM Regulation:

- 5 permanent members and 2 alternates from various EU countries: Italy, Germany, Finland, Belgium, the Netherlands, Portugal, Greece. Appointed for 5 years;
- First meeting in November 2015: choosing chair and vice-chair
- Official starting date: 1 January 2016, first case: March 2016

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### 3. Decision making power of the Appeal Panel

Article 85(3) SRM Regulation: any natural or legal person, including NRA's, may appeal against (SRB) Board decisions, relating to:

- Art. 10(10): Removal of impediments to resolvability;
- Art. 11: Application of simplified obligations;
- Art. 12(1): Determination of MREL (minimum requirement for own funds and eligible liabilities);
- Art. 38 – 41: penalties and fines;
- Art. 65(3): contributions to the administrative expenditures of the SRB;
- Art. 71: ex-post contributions to the Single Resolution Fund (SRF);
- Art. 90(3): access to documents.

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### 3. Decision making power of the Appeal Panel (continued)

Time limit for filing an appeal:

Art. 85(3) SRM Regulation: the appeal should be filed at the Appeal Panel within six weeks of the date of notification of the decision to the person concerned, or the day on which the decision came to the knowledge of the person concerned.

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### 3. Decision making power of the Appeal Panel (continued)

Art. 85(8) SRM Regulation:

*The Appeal Panel may confirm the decision taken by the Board, or remit the case to the latter. The Board shall be bound by the decision of [the] Appeal Panel and it shall adopt an amended decision regarding the case concerned.*

Art. 85(6) SRM Regulation:

*An appeal (...) shall not have suspensive effect. However, the Appeal Panel may, if it considers that circumstances so require, suspend the application of the suspended decision.*

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## 4. Rules of Procedure of the Appeal Panel

- Appeal Panel drafted the RoP itself;
- Content: comparison was made with RoP's from other AP's from ESA's;
- Quite a few decisions needed to be made. For instance:
  - time limits vis-à-vis art 85(4) 'AP shall decide within one month after the appeal has been *lodged*' (Art. 20 RoP);
  - language of the appeal proceedings (Art. 5(2) RoP)
  - publication of a decision in full or extract (Art. 24 RoP)

<https://srb.europa.eu/en/content/procedure>

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## 5. Status of the Appeal Panel

Main question: *are AP members to be considered as 'staff of the SRB'*

General principle Art. 85(5): Members of AP shall act independently and in the public interest. Also reflected in:

- Art. 3 RoP;
- public declaration of commitments;
- public declaration of interests, possibly prejudicial to their independence

<https://srb.europa.eu/en/node/41>

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## 5. Status of the Appeal Panel (continued)

Why is it relevant to determine the status of the Appeal Panel?

1. Liability. Both professional as well as personal, external as well as internal;

Relevant questions:

- do AP members qualify as SRB staff within the meaning of the SRM Regulation;
- can they possibly claim immunity when performing the duties assigned by them by the SRMR (under Art. 11 Protocol No. 7).

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# 5. Status of the Appeal Panel (continued)

## 2. Tax status

Relevant questions:

- Will AP members need to pay VAT in their home country?
- Will AP members need to pay income tax in their home country?

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## 6. Support to the Appeal Panel

Art. 85(2) SRM Regulation: the Appeal Panel shall have sufficient resources.

*Dilemma:*

Art. 4 RoP: Secretariat to the Appeal Panel, provided by the SRB Board:

- is appropriately segregated from the SRB;
- shall not take instructions nor orientations from the Board;
- shall maintain full confidentiality

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## 7. Cases brought before the Appeal Panel

- First case filed in March 2016: proper case which the AP is dealing with at the moment. AP has issued a procedural order and a second is underway.  
*Interesting element:* case was filed before the RoP came into force, i.e. 18 March 2016. Case is about administrative fees.
- Large number of cases were brought before the AP about *ex-ante* contributions. AP has no competency.

*Apparently it is not always clear to banks what the extent of the AP's competency is.*

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Thank you for your attention

General questions about the SRB: [SRB-info@srb.europa.eu](mailto:SRB-info@srb.europa.eu)

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