Summary of the Judgment in Case C-551/22 P, *Commission v SRB*, ECLI:EU:C:2024:520

The resolution of *Banco Popular Español, S.A.* ("**Banco Popular**") in 2017 continues to vex EU courts to this day. The judgment at hand brings closure to at least one facet of this enduring legal quandary: determining who bears legal responsibility for the resolution scheme of *Banco Popular* and, consequently, who should be the appropriate respondent in an action for annulment before the EU Courts. Is it the Single Resolution Board (SRB), which adopted the resolution scheme? Is it the European Commission, which approved it in its entirety? Or does the resolution of *Banco Popular* constitute a joint act of both entities?[1]

In the General Court's judgment of 1 June 2022, ***Fundación Tatiana Pérez de Guzmán el Bueno and SFL v SRB*** (T-481/17, EU:T:2022:311) ("**the judgment under appeal**"), the Court held that the resolution scheme in and of itself is a challengeable act and that the SRB is legally responsible for it. However, both the Advocate General[2] and the Court of Justice of the European Union ("**CJEU**")[3] found that the General Court erred in this conclusion. In essence, their reasoning is as follows:

According to settled case law, an action for annulment under **Art 263 TFEU** may be brought against all measures or acts adopted by EU institutions, bodies, offices, and agencies, whatever their form, which are intended to **produce legal effects** binding on, and **capable of affecting the interests of, a natural or legal person** by bringing about a distinct change in their legal position.[4] The pivotal question, therefore, is: which action is intended to produce legal effects that are binding on and capable of affecting these individuals? Is it the SRB's decision for resolution in the resolution scheme, or is it the endorsement thereof by the Commission?

Yet, the procedure established by the **SRM Regulation**[5] for enacting a resolution scheme is far from a straightforward path; it resembles a **complex interplay** among three, or sometimes even four Union bodies. At various stages, it involves the **ECB**,

---

1 Opinion of the Advocate General of 9 November 2023, C-551/22 P, ECLI:EU:C:2023:846, para 4.
2 See ibid, paras 29 et seq.
3 CJEU, judgement of 18 June 2024, C-551/22 P, ECLI:EU:C:2024:520, paras 92 and 97.
4 Ibid, para 65 and further references there.
5 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 [2014] OJ L 225/1.

the **SRB**, the **European Commission**, and potentially the **Council of the European Union**. Typically, the process commences with the ECB giving the green light by determining that an entity is "failing or likely to fail".[6] Following this assessment, the SRB is tasked with drawing up and adopting the resolution scheme,[7] which must be transmitted immediately to the Commission once it is ready. The Commission then enters the fray with a stringent deadline: within 24 hours, it must either endorse the scheme or object to it concerning its discretionary elements. Additionally, if the Commission believes that the public interest criterion is not fulfilled or if there are significant changes to the use of the Single Resolution Fund, it may propose that the Council object to the scheme. The Council, in turn, has a mere 12 hours to act on the Commission's proposal. As such, one might aptly characterise the procedure as rather complex.[8]

In accordance with established jurisprudence on complex procedures, only the **final act**, which definitively sets out the position of the competent EU institution, body, office, or agency, can be challenged in an action for annulment.[9] **Intermediate steps**, which are meant to prepare for that final act and **have no independent legal effects**, cannot be the subject of such a challenge. Therefore, in such a complex procedure, acts adopted during the preparatory stages leading to the adoption of the definitive act cannot, where they do not produce independent legal effects, be subject to an action for annulment.

While the General Court rightly observed in the judgment under appeal that the resolution scheme at issue states that the SRB "decides" to place *Banco Popular* under resolution on the grounds that the conditions set out in Art 18(1) of the SRM Regulation have been met, it erred in determining the **precise moment when the resolution scheme entered into force**.[10] As specified in the resolution scheme, it "shall enter into force" after it has been endorsed by the Commission. It further follows from the exact timestamp which set the scheme into force – 6:30 a.m. on 7 June 2017 and not 5:13 a.m. when the SRB notified the Commission – that it took effect only at the moment

---

6 Art 18(4) SRM Regulation.
7 Art 7(2) and Art 18(1) SRM Regulation.
8 See Art 18(7) SRM Regulation.
9 See, to that effect, the judgments of 11 November 1981, *IBM v Commission*, 60/81, ECLI:EU:C:1981:264, para 10; of 3 June 2021, *Hungary v Parliament*, C-650/18, ECLI:U:C:2021:426, paras 43 and 46; and of 22 September 2022, *IMG v Commission*, C-619/20 P and C-620/20 P, ECLI:EU:C:2022:722, para 103
10 See General Court, judgement of 1 June 2022, T-481/17, ECLI:EU:T:2022:311, para 117.

when the Commission publicly endorsed it. According to the CJEU, this time stamp demonstrates that the entry into force of the scheme and, consequently, the production of binding legal effects, depended on its endorsement by the Commission.

The CJEU further elaborated on this point by referring to the ***Meroni* doctrine**.[11] While it is true that the SRB is tasked with substantial responsibilities that imply a wide margin of discretion, the exact procedure of Commission endorsement put in place is intended to give concrete expression to the principle identified in *Meroni*.[12] However, while the SRM Regulation confers upon the SRB a wide margin of discretion concerning whether and by what means a bank is to be the subject of a resolution procedure, that discretion, by virtue of Art 18(1) and (4) to (6) of the SRM Regulation, is circumscribed by objective criteria and conditions delimiting the SRB's scope of action, relating both to the resolution tools and conditions. Moreover, the regulation provides for the participation of the Commission in the procedure leading to the adoption of a resolution scheme, which, in order to enter into force, must be endorsed by the Commission. Therefore, Art 18 of the SRM Regulation, on the basis of which the resolution scheme at issue was adopted, is intended to avoid a "transfer of responsibility" within the meaning of the case-law resulting from the *Meroni* judgment. While conferring on the **SRB** the **power to assess whether the conditions for the adoption of a resolution scheme are met** in the present case and the **power to determine the tools necessary** for the purposes of such a scheme, those provisions confer on the **Commission** the **responsibility for the final assessment** of the discretionary aspects of the scheme.

Thus, the CJEU notes that the interpretation adopted by the **General Court** in the judgment under appeal – according to which a resolution scheme may produce binding legal effects irrespective of the Commission's endorsement – **disregards both the powers conferred on the SRB** and the **case-law resulting from the *Meroni* doctrine**.[13] While Art 7 and 18 of the SRM Regulation provide that the SRB is responsible for drawing up and adopting a resolution scheme, they do not confer on it the power to adopt an act producing independent legal effects. The Commission's endorsement is decisive for the content of the resolution scheme at issue.

---

[11] CJEU, judgment of 13 June 1958, *Meroni v High Authority*, EU:C:1958:7; further see the Opinion of the Advocate General of 9 November 2023, C-551/22 P, ECLI:EU:C:2023:846, para 74–97

[12] See Recitals 24 and 26 SRM Regulation.

[13] CJEU, judgement of 18 June 2024, C-551/22 P, ECLI:EU:C:2024:520, para 82.

The CJEU therefore concluded that the resolution scheme at issue does not constitute a challengeable act; only the Commission's endorsement of such a scheme does. Accordingly, the judgment under appeal was set aside insofar as it declared the action for annulment of that scheme admissible.