Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

4 October 2024*

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(Appeal – Economic and monetary policy – Banking Union – Regulation (EU) No 806/2014 – Single Resolution Mechanism for credit institutions and certain investment firms – Resolution procedure applicable where an entity is failing or is likely to fail – Adoption of a resolution scheme in respect of Banco Popular Español SA – Article 18(1) – Conditions for the adoption of a resolution scheme – Obligations of the Single Resolution Board (SRB) – Duty of care – Obligation to state reasons – Article 88 – Obligation of confidentiality – Article 14 – Resolution objectives – Sale of business of the entity concerned – Conditions of sale under which an offer may be accepted – Charter of Fundamental Rights of the European Union – Article 17 – Shareholders' right to property – Validity of Regulation No 806/2014)

In Case C-535/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 August 2022,

Aeris Invest Sàrl, established in Luxembourg (Luxembourg), represented initially by E. Galán Burgos, R. Vallina Hoset and M. Varela Suárez, abogados, and subsequently by C. Jaramillo Samper, R. Vallina Hoset and M. Varela Suárez, abogados,

appellant,

the other parties to proceedings being:

European Commission, represented by L. Flynn, P. Němečková, A. Nijenhuis, A. Steiblytė and D. Triantafyllou, acting as Agents, and by J. Rivas Andrés, abogado,

Single Resolution Board (SRB), represented by H. Ehlers, M.S. Fernández Rupérez, A.R. Lapresta Bienz and J. Rius Riu, acting as Agents, and by F.B. Fernández de Trocóniz Robles, abogado, B. Meyring and S. Schelo, Rechtsanwälte,

defendants at first instance,

Kingdom of Spain, represented by L. Aguilera Ruiz and M.J. Ruiz Sánchez, acting as Agents,

European Parliament, represented by J. Etienne, P. López-Carceller, M. Menegatti, L. Stefani and L. Visaggio, acting as Agents,

Council of the European Union, represented by J. Haunold, H. Marcos Fraile and A. Westerhof Löfflerová, acting as Agents,

Banco Santander SA, established in Santander (Spain), represented by J. Remón Peñalver, J.M. Rodríguez Cárcamo, A.M. Rodríguez Conde and D. Sarmiento Ramírez-Escudero, abogados,

interveners at first instance,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz (Rapporteur), P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2024,

gives the following

Judgment

1 By its appeal, Aeris Invest Sàrl asks the Court of Justice to set aside the judgment of the General Court of the European Union of 1 June 2022 *Aeris Invest* v *Commission and SRB* (T-628/17, EU:T:2022:315) ('the judgment under appeal'), by which the General Court dismissed its action under Article 263 TFEU seeking annulment of Decision SRB/EES/2017/08 of the Single Resolution Board (SRB or 'the Board') in its Executive Session of 7 June 2017 concerning the adoption of a resolution scheme in respect of Banco Popular Español, S.A. ('the resolution scheme at issue') and Commission Decision (EU) 2017/1246 of 7 June 2017 endorsing the resolution scheme for Banco Popular Español S.A. (OJ 2017 L 178, p. 15 and corrigendum OJ 2017 L 320, p. 31).

I. The legal framework

A. Directive 2014/59/EU

2 Article 38 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173 p. 190), entitled 'The sale of business tool', provides in paragraph 2 thereof:

'A transfer made pursuant to paragraph 1 shall be made on commercial terms, having regard to the circumstances, and in accordance with the [European] Union State aid framework.'

3 Article 39 of that directive, entitled 'Sale of business tool: procedural requirements', provides in paragraph 2 thereof:

'Without prejudice to the Union State aid framework, where applicable, the marketing referred to in paragraph 1 shall be carried out in accordance with the following criteria:

(a) it shall be as transparent as possible and shall not materially misrepresent the assets, rights, liabilities, shares or other instruments of ownership of that institution that the authority intends to transfer, having regard to the circumstances and in particular the need to maintain financial stability;

(b) it shall not unduly favour or discriminate between potential purchasers;

…

(f) it shall aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved.

Subject to point (b) of the first subparagraph, the principles referred to in this paragraph shall not prevent the resolution authority from soliciting particular potential purchasers.

…'

B. The SRM Regulation

4 Recitals 24, 26, 58 and 116 of Regulation 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 2014 L 225, p. 1) ('the SRM Regulation') read as follows:

'(24) Since only institutions of the Union may establish the resolution policy of the Union and since a margin of discretion remains in the adoption of each specific resolution scheme, it is necessary to provide for the adequate involvement of the Council [of the European Union] and the [European] Commission, as institutions which may exercise implementing powers, in accordance with Article 291 TFEU. The assessment of the discretionary aspects of the resolution decisions taken by the Board should be exercised by the Commission. Given the considerable impact of the resolution decisions on the financial stability of Member States and on the Union as such, as well as on the fiscal sovereignty of Member States, it is important that implementing power to take certain decisions relating to resolution be conferred on the Council. It should therefore be for the Council, on a proposal from the Commission, to exercise effective control on the assessment by the Board of the existence of a public interest and to assess any material change to the amount of the [Single Resolution Fund ('the Fund')] to be used in a specific resolution action. Moreover, the Commission should be empowered to adopt delegated acts to specify further criteria or conditions to be taken into account by the Board in the exercise of its different powers. Such a conferral of resolution tasks should not in any way hamper the functioning of the internal market for financial services. [The European Banking Authority (EBA)] should therefore maintain its role and retain its existing powers and tasks: it should develop and contribute to the consistent application of the Union legislation applicable to all Member States and enhance convergence of resolution practices across the Union as a whole.

…

(26) The [European Central Bank (ECB)], as the supervisor within the [single supervisory mechanism established by Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63)], and the Board, should be able to assess whether a credit institution is failing or is likely to fail and whether there is no reasonable prospect that any alternative private sector or supervisory action would prevent its failure within a reasonable timeframe. The Board, if it considers all the criteria relating to the triggering of resolutions to be met, should adopt the resolution scheme. The procedure relating to the adoption of the resolution scheme, which involves the Commission and the Council, strengthens the necessary operational independence of the Board while respecting the principle of delegation of powers to agencies as interpreted by the Court of Justice of the European Union ….

…

(58) Liquidation of a failing entity under normal insolvency proceedings could jeopardise financial stability, interrupt the provision of essential services, and affect the protection of depositors. In such a case there is a public interest in applying resolution tools. The objectives of resolution should therefore be to ensure the continuity of essential financial services, to maintain the stability of the financial system, to reduce moral hazard by minimising reliance on public financial support to failing entities, and to protect depositors.

…

(116) Resolution actions should be properly notified and, subject to the limited exceptions laid down in this Regulation, made public. However, as information obtained by the Board, the national resolution authorities and their professional advisers during the resolution process is likely to be sensitive, before the resolution decision is made public, that information should be subject to the requirements of professional secrecy. The fact that information on the contents and details of resolution plans and the result of any assessment of those plans may have far-reaching effects, in particular on the undertakings concerned, must be taken into account. Any information provided in respect of a decision before it is taken, be it on whether the conditions for resolution are satisfied, on the use of a specific tool or of any action during the proceedings, must be presumed to have effects on the public and private interests concerned by the action. However, information that the Board and the national resolution authorities are examining a specific entity could be enough to have negative effects on that entity. It is therefore necessary to ensure that there are appropriate mechanisms for maintaining the confidentiality of such information, such as the content and details of resolution plans and the result of any assessment carried out in that context.'

5 In accordance with the second subparagraph of Article 5(2) of the SRM Regulation, the SRB, like the Council and the Commission, is to be subject, on the one hand, to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12), and, on the other, to any guidelines and recommendations issued by EBA under the latter regulation.

6 Article 14 of that regulation, entitled 'Resolution objectives', provides:

'1. When acting under the resolution procedure referred to in Article 18, the Board, the Council, the Commission, and, where relevant, the national resolution authorities, in respect of their respective responsibilities, shall take into account the resolution objectives, and choose the resolution tools and resolution powers which, in their view, best achieve the resolution objectives that are relevant in the circumstances of the case.

2. The resolution objectives referred to in paragraph 1 are the following:

(a) to ensure the continuity of critical functions;

(b) to avoid significant adverse effects on financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;

(c) to protect public funds by minimising reliance on extraordinary public financial support;

(d) to protect depositors covered by [Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149)] and investors covered by [Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ 1997 L 84, p. 22)];

(e) to protect client funds and client assets.

When pursuing the objectives referred to in the first subparagraph, the Board, the Council, the Commission and, where relevant, the national resolution authorities, shall seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

3. Subject to different provisions of this Regulation, the resolution objectives are of equal significance, and shall be balanced, as appropriate, to the nature and circumstances of each case.'

7 Article 15 of that regulation, entitled 'General principles governing resolution', provides in paragraph 1 thereof:

'When acting under the resolution procedure referred to in Article 18, the Board, the Council, the Commission and, where relevant, the national resolution authorities, shall take all appropriate measures to ensure that the resolution action is taken in accordance with the following principles:

(a) the shareholders of the institution under resolution bear first losses;

…'

8 Article 18 of that regulation, entitled 'Resolution procedure', provides:

'1. The Board shall adopt a resolution scheme pursuant to paragraph 6 in relation to entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met, only when it assesses, in its executive session, on receiving a communication pursuant to the fourth subparagraph, or on its own initiative, that the following conditions are met:

(a) the entity is failing or is likely to fail;

(b) having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures, including measures by an IPS, or supervisory action, including early intervention measures or the write-down or conversion of relevant capital instruments in accordance with Article 21, taken in respect of the entity, would prevent its failure within a reasonable timeframe;

(c) a resolution action is necessary in the public interest pursuant to paragraph 5.

An assessment of the condition referred to in point (a) of the first subparagraph shall be made by the ECB, after consulting the Board. The Board, in its executive session, may make such an assessment only after informing the ECB of its intention and only if the ECB, within three calendar days of receipt of that information, does not make such an assessment. The ECB shall,

without delay, provide the Board with any relevant information that the Board requests in order to inform its assessment.

Where the ECB assesses that the condition referred to in point (a) of the first subparagraph is met in relation to an entity or group referred to in the first subparagraph, it shall communicate that assessment without delay to the Commission and to the Board.

An assessment of the condition referred to in point (b) of the first subparagraph shall be made by the Board, in its executive session, or, where applicable, by the national resolution authorities, in close cooperation with the ECB. The ECB may also inform the Board or the national resolution authorities concerned that it considers the condition laid down in that point to be met.

2. Without prejudice to cases where the ECB has decided to exercise directly supervisory tasks relating to credit institutions pursuant to Article 6(5)(b) of [Regulation No 1024/2013], in the event of receipt of a communication pursuant to paragraph 1 or where the Board intends to make an assessment under paragraph 1 on its own initiative in relation to an entity or group referred to in Article 7(3), the Board shall communicate its assessment to the ECB without delay.

…

4. For the purposes of point (a) of paragraph 1, the entity shall be deemed to be failing or to be likely to fail in one or more of the following circumstances:

(a) the entity infringes, or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the ECB, including but not limited to the fact that the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;

(b) the assets of the entity are, or there are objective elements to support a determination that the assets of the entity will, in the near future, be less than its liabilities;

(c) the entity is, or there are objective elements to support a determination that the entity will, in the near future, be unable to pay its debts or other liabilities as they fall due;

(d) extraordinary public financial support is required except where, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability, that extraordinary public financial support takes any of the following forms:

…

5. For the purposes of point (c) of paragraph 1 of this Article, a resolution action shall be treated as in the public interest if it is necessary for the achievement of, and is proportionate to one or more of the resolution objectives referred to in Article 14 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.

6. If the conditions laid down in paragraph 1 are met, the Board shall adopt a resolution scheme. The resolution scheme shall:

(a) place the entity under resolution;

(b) determine the application of the resolution tools to the institution under resolution referred to in Article 22(2), in particular any exclusions from the application of the bail-in in accordance with Article 27(5) and (14);

(c) determine the use of the Fund to support the resolution action in accordance with Article 76 and in accordance with a Commission decision taken in accordance with Article 19.

7. Immediately after the adoption of the resolution scheme, the Board shall transmit it to the Commission.

Within 24 hours from the transmission of the resolution scheme by the Board, the Commission shall either endorse the resolution scheme, or object to it with regard to the discretionary aspects of the resolution scheme in the cases not covered in the third subparagraph of this paragraph.

Within 12 hours from the transmission of the resolution scheme by the Board, the Commission may propose to the Council:

(a) to object to the resolution scheme on the ground that the resolution scheme adopted by the Board does not fulfil the criterion of public interest referred to in paragraph 1(c);

(b) to approve or object to a material modification of the amount of the Fund provided for in the resolution scheme of the Board.

…

8. Where the Council objects to the placing of an institution under resolution on the ground that the public interest criterion referred to in paragraph 1(c) is not fulfilled, the relevant entity shall be wound up in an orderly manner in accordance with the applicable national law.

…’

9 Article 20 of that regulation, entitled ‘Valuation for the purposes of resolution’, provides:

‘1. Before deciding on resolution action or the exercise of the power to write down or convert relevant capital instruments, the Board shall ensure that a fair, prudent and realistic valuation of the assets and liabilities of an entity referred to in Article 2 is carried out by a person independent from any public authority, including the Board and the national resolution authority, and from the entity concerned.

2. Subject to paragraph 15, where all of the requirements laid down in paragraphs 1 and 4 to 9 are met, the valuation shall be considered to be definitive.

3. Where an independent valuation in accordance with paragraph 1 is not possible, the Board may carry out a provisional valuation of the assets and liabilities of the entity referred to in Article 2, in accordance with paragraph 10 of this Article.

4. The objective of the valuation shall be to assess the value of the assets and liabilities of an entity referred to in Article 2 that meets the conditions for resolution of Articles 16 and 18.

5. The purposes of the valuation shall be:

(a) to inform the determination of whether the conditions for resolution or the conditions for the write-down or conversion of capital instruments are met;

(b) if the conditions for resolution are met, to inform the decision on the appropriate resolution action to be taken in respect of an entity referred to in Article 2;

(c) when the power to write down or convert relevant capital instruments is applied, to inform the decision on the extent of the cancellation or dilution of instruments of ownership, and the extent of the write-down or conversion of relevant capital instruments;

(d) when the bail-in tool is applied, to inform the decision on the extent of the write-down or conversion of eligible liabilities;

(e) when the bridge institution tool or asset separation tool is applied, to inform the decision on the assets, rights, liabilities or instruments of ownership to be transferred and the decision on the value of any consideration to be paid to the institution under resolution or, as the case may be, to the owners of the instruments of ownership;

(f) when the sale of business tool is applied, to inform the decision on the assets, rights, liabilities or instruments of ownership to be transferred and to inform the Board's understanding of what constitutes commercial terms for the purposes of Article 24(2)(b);

(g) in all cases, to ensure that any losses on the assets of an entity referred to in Article 2 are fully recognised at the moment the resolution tools are applied or the power to write down or convert relevant capital instruments is exercised.

6. Without prejudice to the Union State aid framework, where applicable, the valuation shall be based on prudent assumptions, including as to rates of default and severity of losses. The valuation shall not assume any potential future provision of any extraordinary public financial support, any central bank emergency liquidity assistance, or any central bank liquidity assistance provided under non-standard [terms] …

…

10. Where, due to urgency in the circumstances of the case, either it is not possible to comply with the requirements laid down in paragraphs 7 and 9, or paragraph 3 applies, a provisional valuation shall be carried out. The provisional valuation shall comply with the requirements laid down in paragraph 4 and, in so far as reasonably practicable in the circumstances, with the requirements laid down in paragraphs 1, 7 and 9.

The provisional valuation referred to in the first subparagraph shall include a buffer for additional losses, with appropriate justification.

11. A valuation that does not comply with all of the requirements laid down in paragraphs 1 and 4 to 9 shall be considered to be provisional until an independent person as referred to in paragraph 1 has carried out a valuation that is fully compliant with all of the requirements laid down in those paragraphs. That *ex-post* definitive valuation shall be carried out as soon as

practicable. It may be carried out either separately from the valuation referred to in paragraphs 16, 17 and 18, or simultaneously with and by the same independent person as that valuation, but shall be distinct from it.

The purposes of the *ex-post* definitive valuation shall be:

(a) to ensure that any losses on the assets of an entity referred to in Article 2 are fully recognised in the books of accounts of that entity;

(b) to inform the decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 12 of this Article.

12. In the event that the *ex-post* definitive valuation's estimate of the net asset value of an entity referred to in Article 2 is higher than the provisional valuation's estimate of the net asset value of that entity, the Board may request the national resolution authority to:

(a) exercise its power to increase the value of the claims of creditors or owners of relevant capital instruments which have been written down under the bail-in tool;

(b) instruct a bridge institution or asset management vehicle to make a further payment of consideration in respect of the assets, rights or liabilities to an institution under resolution, or as the case may be, in respect of the instruments of ownership to the owners of those instruments of ownership.

13. Notwithstanding paragraph 1, a provisional valuation conducted in accordance with paragraphs 10 and 11 shall be a valid basis for the Board to decide on resolution actions, including instructing national resolution authorities to take control of a failing institution or on the exercise of the write-down or conversion power of relevant capital instruments.

…

15. The valuation shall be an integral part of the decision on the application of a resolution tool or on the exercise of a resolution power or the decision on the exercise of the write-down or conversion power of capital instruments. The valuation itself shall not be subject to a separate right of appeal but may be subject to an appeal together with the decision of the Board.

16. 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, the Board shall ensure that a valuation is carried out by an independent person as referred to in paragraph 1 as soon as possible after the resolution action or actions have been effected. That valuation shall be distinct from the valuation carried out under paragraphs 1 to 15.

…'

10 Article 21 of the SRM Regulation, entitled 'Write-down and conversion of capital instruments', provides in paragraph 1 thereof:

'The Board shall exercise the power to write down or convert relevant capital instruments acting under the procedure laid down in Article 18, in relation to the entities and groups referred to in Article 7(2), and to the entities and groups referred to in Article 7(4)(b) and (5), where the

conditions for the application of those paragraphs are met, only where it assesses, in its executive session, on receiving a communication pursuant to the second subparagraph or on its own initiative, that one or more of the following conditions are met:

(a) where the determination has been made that the conditions for resolution specified in Articles 16 and 18 have been met, before any resolution action is taken;

…'

11 Article 22 of that regulation, entitled 'General principles of resolution tools', provides:

'1. Where the Board decides to apply a resolution tool to an entity or group referred to in Article 7(2) or to an entity or group referred to in Article 7(4)(b) and (5) where the conditions for the application of those paragraphs are met, and that resolution action would result in losses being borne by creditors or their claims being converted, the Board shall instruct the national resolution authorities to exercise the power to write down and convert relevant capital instruments in accordance with Article 21 immediately before or together with the application of the resolution tool.

2. The resolution tools referred to in point (b) of Article 18(6) are the following:

(a) the sale of business tool;

(b) the bridge institution tool;

(c) the asset separation tool;

(d) the bail-in tool.

…

4. The resolution tools shall be applied to meet the resolution objectives specified in Article 14, in accordance with the resolution principles specified in Article 15. They may be applied either individually or in any combination, except for the asset separation tool which may be applied only together with another resolution tool.

…'

12 Article 24 of that regulation, entitled 'Sale of business tool', reads as follows:

'1. Within the resolution scheme, the sale of business tool shall consist of the transfer to a purchaser that is not a bridge institution of the following:

(a) instruments of ownership issued by an institution under resolution; or

(b) all or any assets, rights or liabilities of an institution under resolution.

2. Concerning the sale of business tool, the resolution scheme shall establish:

…

(b) the commercial terms, having regard to the circumstances and the costs and expenses incurred in the resolution process, pursuant to which the national resolution authority shall make the transfer in accordance with Article 38(2), (3) and (4) of [Directive 2014/59];

…

(d) the arrangements for the marketing by the national resolution authority of that entity or those instruments, assets, rights and liabilities in accordance with Article 39(1) and (2) of [Directive 2014/59];

(e) whether the compliance with the marketing requirements by the national resolution authority is likely to undermine the resolution objectives in accordance with paragraph 3 of this Article.

3. The Board shall apply the sale of business tool without complying with the marketing requirements laid down in point (e) of paragraph 2 when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives and in particular where the following conditions are met:

(a) it considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the institution under resolution; and

(b) it considers that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool in addressing that threat or achieving the resolution objective specified in point (b) of Article 14(2).'

13 Article 29 of the SRM Regulation governs the implementation, by the national resolution authorities and the SRB, of decisions taken under that regulation and provides, in the first sentence of paragraph 5, that the SRB is to publish on its official website either a copy of the resolution scheme or a notice summarising the effects of the resolution action, and in particular the effects on retail customers.

14 Article 34 of that regulation, entitled 'Requests for information', provides in paragraphs 1 and 2 thereof:

'1. For the purpose of performing its tasks under this Regulation, the Board may, through the national resolution authorities or directly, after informing them, making full use of all of the information available to the ECB or to the national competent authorities, require the following legal or natural persons to provide all of the information necessary to perform the tasks conferred on it by this Regulation:

(a) the entities referred to in Article 2;

(b) employees of the entities referred to in Article 2;

(c) third parties to whom the entities referred to in Article 2 have outsourced functions or activities.

2. The entities and persons referred to in paragraph 1 shall supply the information requested pursuant to that paragraph. The requirements of professional secrecy shall not exempt those

entities and persons from the duty to supply that information. The supply of the information requested shall not be deemed to infringe the requirements of professional secrecy.'

15 Article 76(1)(e) of the SRM Regulation provides that, within the resolution scheme, when applying the resolution tools, the SRB may use the Fund only to the extent necessary to ensure the effective application of the resolution tools in order to pay compensation to shareholders or creditors if, following an evaluation pursuant to Article 20(5) of that regulation, they have incurred greater losses than they would have incurred, following a valuation pursuant to Article 20(16), in a winding up under normal insolvency proceedings.

16 Under Article 88(1) of that regulation, entitled 'Professional secrecy and exchange of information':

'Members of the Board, the Vice-Chair, the members of the Board referred to in Article 43(1)(b), the staff of the Board and staff exchanged with or seconded by participating Member States carrying out resolution duties shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased. They shall in particular be prohibited from disclosing confidential information received during the course of their professional activities or from a competent authority or resolution authority in connection with their functions under this Regulation, to any person or authority, unless it is in the exercise of their functions under this Regulation or in summary or collective form such that entities referred to in Article 2 cannot be identified or with the express and prior consent of the authority or the entity which provided the information.

Information subject to the requirements of professional secrecy shall not be disclosed to another public or private entity except where such disclosure is due for the purpose of legal proceedings.

Those requirements shall also apply to potential purchasers contacted in order to prepare for the resolution of an entity pursuant to Article 13(3).'

17 Article 90 of the SRM Regulation, entitled 'Access to documents', is worded as follows:

'1. [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 2001 L 145, p. 43)] shall apply to documents held by the Board.

…

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.'

II. Background to the dispute

18 Banco Popular Español SA ('Banco Popular') was a credit institution under direct prudential supervision by the ECB.

19 Aéris Invest is a legal person under Luxembourg law which was a shareholder in Banco Popular.

A. Banco Popular's economic situation in 2016 and 2017

20 The facts concerning the changes to Banco Popular's economic situation in 2016 and 2017, which are set out in paragraphs 26 to 46 of the judgment under appeal, may be summarised as follows.

21 In 2016, Banco Popular undertook a capital increase of EUR 2.5 billion.

22 On 5 December 2016, the SRB in its Executive Session adopted a resolution plan for the Banco Popular group ('the 2016 resolution plan'). The preferred resolution tool in the 2016 resolution plan was the bail-in tool provided for in Article 27 of the SRM Regulation.

23 On 3 February 2017, Banco Popular published its 2016 annual report in which it disclosed the need for extraordinary provisions in the sum of EUR 5.7 billion, leading to consolidated losses of EUR 3.485 billion, and the appointment of a new chairman.

24 On 10 February 2017, DBRS Ratings Limited (DBRS), now DBRS Morningstar, downgraded Banco Popular's rating, with a negative outlook, in view of Banco Popular's weakened capital position following a net loss which was higher than that anticipated in its annual report, mentioned in paragraph 23 of this judgment, and the bank's struggle to reduce its elevated stock of non-performing assets.

25 On 3 April 2017, Banco Popular announced the results of internal audits, indicating that corrections to its 2016 annual report might be required. Those adjustments were made in Banco Popular's financial report for the first quarter of 2017.

26 Following that announcement, DBRS Morningstar, on 6 April, downgraded Banco Popular's rating, again with a negative outlook. On 7 April, Standard & Poor's, and on 21 April 2017, Moody's Investors Service ('Moody's') also downgraded Banco Popular's rating with a negative outlook.

27 At the general shareholders' meeting of Banco Popular on 10 April 2017, the Chairman of the Board of Directors announced that the bank envisaged either a further capital increase or a corporate transaction to address the group's capital position and its level of non-performing assets. The Chief Executive Officer (CEO) of Banco Popular was replaced after less than one year in office.

28 In April 2017, Banco Popular initiated a private sale process with a view to achieving its sale to a strong competitor, thus restoring its financial situation. The deadline for potential purchasers interested in acquiring Banco Popular to submit their bids was initially set at 10 June 2017.

29 On 5 May 2017, Banco Popular presented its financial report for the first quarter of 2017, reporting losses of EUR 137 million.

30 On 12 May 2017, the liquidity coverage requirement of Banco Popular dropped below the minimum threshold of 80% set by Article 460(2)(c) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1).

31 By letter of 16 May 2017, Banco Santander SA informed Banco Popular that it could not make a concrete bid in the context of the private sale process.

32 On 16 May 2017, in a communication of a relevant fact to the Comisión nacional del mercado de valores (National Securities Market Commission, Spain), Banco Popular stated that potential purchasers had expressed an interest in the private sale process, but that it had not received any concrete bids.

33 On 19 May 2017, Fitch Ratings Ltd downgraded Banco Popular's long-term rating.

34 On 23 May 2017, the Chair of the SRB, Ms Elke König, granted an interview to the television channel Bloomberg, in which she was questioned, inter alia, on the situation of Banco Popular.

35 In May 2017, several press articles reported on the difficulties faced by Banco Popular.

36 In the first days of June 2017, Banco Popular had to face massive liquidity outflows.

37 On the morning of 5 June 2017, Banco Popular submitted an initial request for emergency liquidity assistance to Banco de España (Bank of Spain), then a second request, in the afternoon, containing an extension of the amount requested on account of extremely acute liquidity movements. On the basis of a request from the Bank of Spain and following the ECB's assessment on the same day concerning Banco Popular's request for emergency liquidity assistance, the Governing Council of the ECB did not raise any objections to urgent liquidity assistance to Banco Popular for the period up to 8 June 2017. Banco Popular received part of that emergency liquidity assistance, then the Bank of Spain stated that it was not in a position to provide additional emergency liquidity assistance to Banco Popular.

B. The conduct of the resolution procedure

38 In paragraphs 47 to 67 of the judgment under appeal, the General Court set out the facts relating to the conduct of the resolution procedure, which may be summarised as follows.

39 On 23 May 2017, the SRB hired the auditing firm Deloitte ('Deloitte') as an independent expert to carry out a valuation of Banco Popular in accordance with Article 20 of the SRM Regulation.

40 On 24 May 2017, on the basis of Article 34 of the SRM Regulation, the SRB asked Banco Popular to supply the information necessary in order to carry out its valuation. On 2 June 2017, Banco Popular was also asked to supply information about the private sale process and to be ready to provide access to the secure virtual data room that it had set up in the context of that process.

41 On 3 June 2017, the SRB in its Executive Session adopted Decision SRB/EES/2017/06, addressed to the Fondo de Reestructuración Ordenada Bancaria (Fund for Orderly Bank Restructuring, Spain) ('the FROB'), concerning the marketing of Banco Popular. The SRB approved the immediate launching of the marketing of Banco Popular by the FROB and informed the latter of the marketing requirements, in accordance with Article 39 of Directive 2014/59. In particular, the SRB instructed the FROB to contact the five potential purchasers which had been invited to submit offers in the context of the private sale process.

42 Of the five potential purchasers, two decided not to participate in the marketing process and one was excluded by the ECB for prudential reasons.

43 On 4 June 2017, the two potential purchasers which had decided to participate in the marketing process, Banco Santander and Banco Bilbao Vizcaya Argentaria, SA, signed a non-disclosure agreement and on 5 June 2017 were given access to the virtual data room.

44 On 5 June 2017, the SRB adopted a first valuation ('valuation 1'), pursuant to Article 20(5)(a) of the SRM Regulation, which had the objective of informing the determination whether the conditions for resolution, as defined in the first subparagraph of Article 18(1) of that regulation, were met.

45 On 6 June 2017, the ECB made a 'failing or likely to fail' assessment of Banco Popular, after consulting the SRB, in accordance with the second subparagraph of Article 18(1) of that regulation.

46 It is apparent from paragraph 61 of the judgment under appeal that, following that assessment, taking into account the changes to Banco Popular's economic situation in 2016 and 2017, as summarised in paragraphs 21 to 37 above, and in particular the excessive deposit outflows, the speed at which liquidity had been lost from the bank and the inability of the bank to generate further liquidity, the ECB considered that there were objective elements indicating that Banco Popular was likely, in the near future, to be unable to pay its debts or other liabilities as they fell due. The ECB concluded that Banco Popular was deemed to be failing, or in any case likely to fail in the near future, in accordance with point (a) of the first subparagraph of Article 18(1) and point (c) of the first subparagraph of Article 18(4) of the SRM Regulation.

47 On the same day, Banco Popular informed the ECB that its Board of Directors had reached the conclusion that the bank was likely to fail.

48 The facts relating to the marketing process, as set out in paragraphs 63 to 67 of the judgment under appeal may be presented as follows.

49 By letter of 6 June 2017, the FROB provided information on the marketing process and set the deadline for the submission of bids at midnight on 6 June 2017.

50 On the same day, Banco Bilbao Vizcaya Argentaria, one of the two potential purchasers of Banco Popular, informed the FROB that it would not be making a bid.

51 Also on 6 June 2017, Deloitte submitted a second valuation ('valuation 2') to the SRB, drawn up pursuant to Article 20(10) of the SRM Regulation. The purpose of valuation 2 was to estimate the value of Banco Popular's assets and liabilities, to provide an evaluation of the treatment that shareholders and creditors would have received if Banco Popular had entered into normal insolvency proceedings, and to inform the decision to be taken on the shares and instruments of ownership to be transferred and the SRB's understanding of what constitutes commercial terms for the purposes of the sale of business tool. That valuation, inter alia, estimated the economic value of Banco Popular at EUR 1.3 billion in the best-case scenario, at minus EUR 8.2 billion in the worst-case scenario and at minus EUR 2 billion for the best estimate.

52 On 7 June 2017, Banco Santander submitted a concrete bid.

53 By letter of 7 June 2017, the FROB informed the SRB that Banco Santander had submitted a bid at 3.12 a.m. on 7 June and that the price offered by Banco Santander for the purchase of Banco Popular shares was EUR 1. The FROB stated that its governing committee had selected Banco

Santander as awardee of the competitive sale process of Banco Popular and had decided to propose to the SRB to designate Banco Santander as buyer in the SRB's decision on the adoption of a resolution scheme in respect of Banco Popular.

C. The resolution scheme at issue

54 On 7 June 2017, the SRB adopted the resolution scheme at issue in respect of Banco Popular, on the basis of the SRM Regulation.

55 In recitals 19, 21 to 25, 26(c), 36 and 46 of that scheme, the SRB observed:

– that, on 5 December 2016, the SRB adopted a resolution plan, determining a resolution strategy and identifying a preferred resolution tool (recitals 19, 21 and 22);

– that it was clear from the ECB's 'failing or likely to fail' assessment of Banco Popular that that bank's liquidity situation had deteriorated significantly since October 2016, as a result of deposit outflows across all customer segments; that consequently, the bank did not have sufficient options to restore its liquidity position in order to ensure that it would be in a position to meet its liabilities as they fell due (recital 23);

– that various circumstances had led to the rapid deterioration in Banco Popular's liquidity position, namely:

  – in February 2017, Banco Popular had disclosed the need for extraordinary provisions amounting to EUR 5.7 billion, leading to losses of EUR 3.485 billion, and appointed a new chairman;

  – on 10 February 2017, DBRS Morningstar had downgraded Banco Popular's rating;

  – on 3 April 2017, Banco Popular had released an ad hoc public statement reporting on the outcome of several internal audits with a potentially significant impact on the bank's financial statements, and confirmed that its CEO would be replaced after less than one year in office;

  – on 7 April 2017, Standard & Poor's and, on 21 April, Moody's had downgraded Banco Popular's rating;

  – on 12 May 2017, Banco Popular had breached the liquidity coverage requirement of 80% and was unable to re-establish compliance with the regulatory limit thereafter;

  – the continuous negative press coverage of Banco Popular's financial results and the allegedly imminent risk of bankruptcy or illiquidity had resulted in an increase in deposit outflows; and

  – on 6 June 2017, DBRS Morningstar and Moody's had downgraded Banco Popular's rating (recital 24);

– that the above circumstances had resulted in significant deposit outflows (recital 25);

– that Banco Popular had received initial emergency liquidity assistance on 5 June 2017, following the agreement given by the ECB, but that the Bank of Spain had not been in a position to grant Banco Popular further emergency liquidity assistance (recital 26(c));

– that on 6 June 2017, Banco Popular had notified the ECB that its Board of Directors had reached the conclusion that the bank was likely to fail (recital 36), and

– that the resolution tool contemplated in the 2016 resolution plan was not appropriate in view of the circumstances prevailing on the date of the resolution (recital 46).

56 In Article 1 of the resolution scheme at issue, given that the conditions provided for in the first subparagraph of Article 18(1) of the SRM Regulation had been met, the SRB decided to place Banco Popular under resolution as of the resolution date.

57 In that regard, it is apparent from Articles 2 to 4 of the resolution scheme at issue that the SRB considered, first of all, that Banco Popular was failing or was likely to fail, secondly, that there were no alternative measures which could prevent the failure of Banco Popular within a reasonable timeframe and, lastly, that resolution action in the form of a sale of business tool in respect of Banco Popular was necessary in order to achieve the continuity of the bank's critical functions and to avoid significant adverse effects on financial stability, particularly in Spain.

58 Consequently, in Article 5.1 of the resolution scheme at issue, the SRB decided that:

'The resolution tool to be applied to [Banco Popular] shall consist in the sale of business pursuant to Article 24 of [the SRM Regulation] for transferring shares to a purchaser. The write down and conversion of capital instruments will be exercised immediately before the application of the sale of business tool.'

59 Article 6 of the resolution scheme at issue sets out the rules concerning the write-down and the sale of business. Thus, in Article 6.1 thereof, the SRB decided:

– first, to write down the nominal amount of Banco Popular's share capital in an amount of EUR 2 098 429 046, resulting in the cancellation of 100% of Banco Popular's share capital;

– subsequently, to convert all the principal amount of the additional Tier 1 instruments issued by Banco Popular and outstanding as at the date of the decision relating to the resolution scheme at issue into newly issued shares of Banco Popular ('the New Shares I');

– subsequently, to write down to zero the nominal amount of the 'New Shares I', resulting in the cancellation of 100% of those 'New Shares I';

– lastly, to convert all the principal amount of the Tier 2 capital instruments issued by Banco Popular and outstanding as at the date of the resolution decision into newly issued shares of Banco Popular ('the New Shares II').

60 Article 6.3 of the resolution scheme at issue provides that those write-down and conversion measures are based on valuation 2, as corroborated by the results of an open and transparent marketing process conducted by the FROB.

61 In Article 6.5 of the resolution scheme at issue, the SRB stated that it was exercising the powers conferred on it by Article 24(1)(a) of the SRM Regulation concerning the sale of business tool, and ordered that the 'New Shares II' be transferred to Banco Santander free and clear of any rights or liens of any third party, in consideration of a purchase price of EUR 1. It was specified that the purchaser had already consented to the transfer.

62 The SRB also stated that the transfer of the 'New Shares II' should be made on the basis of the purchaser's binding offer of 7 June 2017 and implemented by the FROB.

63 The resolution scheme at issue was submitted to the Commission for endorsement on 7 June 2017.

64 On the same day, the Commission adopted Decision 2017/1246 endorsing the resolution scheme at issue and notified it to the SRB. Recital 4 of that decision states:

'The Commission agrees with the resolution scheme. In particular, it agrees with the reasons provided by the SRB of why resolution is necessary in the public interest in accordance with Article 18(5) of [the SRM] Regulation.'

65 Also on 7 June 2017, the SRB notified the resolution scheme at issue to the FROB, publishing on its website an information notice regarding the adoption of that scheme, together with a document summarising the effects of the resolution.

66 Also on that date, the FROB took the necessary action to implement the resolution scheme at issue in accordance with Article 29 of the SRM Regulation.

D. Facts subsequent to the adoption of the resolution scheme at issue

67 On 14 June 2018, Deloitte sent to the SRB the valuation of difference in treatment, provided for in Article 20(16) to (18) of the SRM Regulation, carried out in order to determine whether the shareholders and creditors would have received better treatment if Banco Popular had entered into normal insolvency proceedings. On 31 July 2018, Deloitte sent to the SRB an addendum to that valuation, correcting some formal errors.

68 On 11 July 2017, the SRB published on its website a non-confidential version of the resolution scheme at issue. In that version, the SRB, inter alia, redacted some of the data from recitals 23 to 26 of that scheme, relating to Banco Popular's liquidity crisis, as well as substantial parts of Article 6.3 and 6.4 of the resolution scheme at issue concerning the exercise of the power to write down and convert capital instruments.

69 In July 2017, the ECB published on its website a non-confidential version of its assessment that Banco Popular was failing or likely to fail.

70 On 2 February and 31 October 2018, the SRB published less redacted, non-confidential, versions of the resolution scheme at issue, in which some previously redacted data, referred to in paragraph 68 of this judgment were now included, with the exception of certain figures. In that context, it also published non-confidential versions of valuations 1 and 2.

III. The procedure before the General Court and the judgment under appeal

71 By application lodged at the Registry of the General Court on 18 September 2017, the appellant brought an action for annulment of the resolution scheme at issue and of Decision 2017/1246.

A. The procedure before the General Court

72 By a document lodged at the Registry of the General Court on 15 November 2017, the SRB requested the General Court, pursuant to Article 92(3) of the Rules of Procedure of the General Court, to order measures of inquiry concerning the production of certain documents referred to in the annex to that request. By decision of 30 November 2017, the General Court decided not to grant that request for measures of inquiry at that stage in the proceedings.

73 By documents lodged at the Registry of the General Court on 6 and 30 November 2017 and on 5 and 13 December 2017 respectively, Banco Santander, the Council, the Kingdom of Spain and the European Parliament applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission and the SRB. By decisions of 6 August 2018 and 12 April 2019 respectively, the General Court granted those applications for leave to intervene.

74 On 16 February 2018, in the context of measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, the General Court requested the SRB to submit the latest, non-confidential version of the resolution scheme at issue, as well as a non-confidential version of valuation 2, which were published on the SRB's website. The SRB submitted the documents within the prescribed time limit.

75 By letter lodged at the Registry of the General Court on 21 January 2020, the appellant introduced a new plea in law pursuant to Article 84 of the Rules of Procedure. The Commission, the SRB, the Kingdom of Spain, the Parliament, the Council and Banco Santander lodged their observations within the prescribed time limits.

76 By letter lodged at the Registry of the General Court on 2 October 2020, the appellant produced a new offer of evidence pursuant to Article 85(3) of the Rules of Procedure. The Commission, the SRB, the Kingdom of Spain, the Parliament, the Council and Banco Santander lodged their observations within the prescribed time limit.

77 On 16 March 2021, in the context of measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, the General Court invited the Commission and the SRB to produce several documents. By letters of 30 March and 20 April 2021, the SRB replied that the requested documents were, in whole or in part, confidential and that they could be produced if the General Court adopted a measure of inquiry to that effect.

78 By order of 12 May 2021, the General Court ordered the SRB, on the basis, first, of the first paragraph of Article 24 of the Statute of the Court of Justice of the European Union and, second, of Article 91(b), Article 92(3) and Article 103 of its Rules of Procedure, to produce the full versions of the resolution scheme at issue, valuation 2, the ECB's assessment of 6 June 2017 that Banco Popular was failing or was likely to fail, as well as a full version and a non-confidential version of Banco Popular's letter of 6 June 2017 to the ECB, including the annex to that letter, and of the ECB's letter of 18 May 2017 to Banco Popular.

79 By order of 9 June 2021, the General Court removed from the file the confidential versions of the documents produced by the SRB pursuant to the order of 12 May 2021, and sent to the appellant, the Kingdom of Spain, the Parliament, the Council and Banco Santander the letter of 6 June 2017 from Banco Popular to the ECB without the annex to that letter.

B. The judgment under appeal

80 In support of its action, the appellant had raised ten pleas in law.

81 The first plea alleged infringement of the obligation to state reasons and of the rights of the defence, enshrined in Articles 15 and 296 TFEU and Articles 42 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). The second plea alleged infringement of the principle *nemo auditur propriam turpitudinem allegans* and of Article 88 of the SRM Regulation. The third plea alleged that Articles 21 and 24 of the SRM Regulation are unlawful in so far as they infringe the principles governing the delegation of powers. The fourth plea alleged that Articles 15 and 22 of the SRM Regulation are unlawful in so far as they infringe the right to property enshrined in Article 17 of the Charter and the principle of proportionality laid down in Article 5(4) TEU. The fifth plea alleged that the SRM Regulation is unlawful in so far as Articles 18 and 20 thereof infringe the right to be heard, enshrined in Articles 17 and 41 of the Charter. The sixth plea alleged infringement of the right to property, enshrined in Article 17 of the Charter, and infringement of Article 5(4) TEU. The seventh plea alleged infringement of the right to be heard, enshrined in Articles 17 and 41 of the Charter. The eighth plea alleged infringement of Article 18 of the SRM Regulation, of the duty of care and of Article 296 TFEU. The ninth plea alleged infringement of Articles 14 and 20 of that regulation, of the duty of care and of Article 296 TFEU. The tenth plea alleged infringement of Article 14 of that regulation, of the duty of care and of Article 296 TFEU.

82 By the judgment under appeal, the General Court dismissed the action in its entirety.

83 In that judgment, it also rejected the appellant's requests for measures of organisation of procedure and measures of inquiry.

IV. Forms of order sought by the parties to the appeal

84 The appellant claims that the Court of Justice should:

– set aside the judgment under appeal;

– grant the form of order sought by it before the General Court, seeking the annulment of the resolution scheme at issue and of Decision 2017/1246, and a declaration that Articles 15 and 22 are inapplicable in accordance with Article 277 TFEU; and

– order the Commission and the SRB to pay the costs at first instance and on appeal.

85 The Commission, the SRB, the Parliament, the Council, the Kingdom of Spain and Banco Santander contend that the Court should dismiss the appeal and order the appellant to pay the costs.

86 Should the Court uphold the appeal and decide, in accordance with Article 61 of the Statute of the Court of Justice of the European Union, to give judgment itself on the action for annulment, Banco Santander contends that it should, in accordance with the second paragraph of Article 264 TFEU, limit the scope of the forthcoming judgment by upholding the effects of the sale of Banco Popular to Banco Santander. The Council requests the Court, should it so rule, to find that there is nothing to call into question the legality of Articles 15, 18, 20, 21, 22 and 24 of the SRM Regulation.

V. The appeal

87 In support of its appeal, the appellant raises eight grounds of appeal alleging infringement of, respectively:

– Article 18 of the SRM Regulation, the duty of care and Article 296 TFEU (first ground of appeal);

– Articles 14 and 20 of the SRM Regulation, the duty of care and Article 296 TFEU (second ground of appeal);

– the duty of care, Articles 17 and 47 of the Charter and Article 14 of the SRM Regulation (third ground of appeal);

– the rights of the defence enshrined in Article 47 of the Charter and Article 296 TFEU (fourth ground of appeal);

– Article 296 TFEU and the rights of the defence enshrined in Article 47 of the Charter in respect of confidentiality of the resolution scheme at issue and valuation 2 (fifth ground of appeal);

– Article 47 of the Charter and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), in so far as the General Court rejected the appellant's request for documents (sixth ground of appeal);

– Articles 17 and 52 of the Charter, in so far as the General Court rejected the plea of illegality in respect of Articles 15 and 22 of the SRM Regulation (seventh ground of appeal); and

– Articles 17 and 52 of the Charter and Article 5(4) TEU (eighth ground of appeal).

A. Preliminary observations

88 As a preliminary point, it should be noted that, by the action initiating the present appeal, the appellant seeks the annulment of both the resolution scheme at issue and Decision 2017/1246.

89 Although the Court has already held, in its judgment of 18 June 2024, *Commission* v *SRB* (C-551/22 P, EU:C:2024:520, paragraphs 102 and 103), that the resolution scheme at issue does not constitute a challengeable act for the purposes of the fourth paragraph of Article 263 TFEU, with the result that that action is inadmissible in so far as it relates to that scheme, Decision

2017/1246, by which the Commission endorsed that scheme, displays, for its part, the features of an act against which an action for annulment may be brought under the fourth paragraph of Article 263 TFEU.

90 That said, the Court has stated that, in an action for annulment brought against a Commission decision such as Decision 2017/1246, it is open to the natural or legal persons concerned to plead the illegality of the resolution scheme approved by that institution, thereby giving it binding legal effect, which is capable of guaranteeing them sufficient judicial protection. Furthermore, by that endorsement, the Commission is deemed to agree with the information and grounds contained in the resolution scheme in question, with the result that it must, if necessary, answer to the EU judicature (judgment of 18 June 2024, *Commission* v *SRB*, C-551/22 P, EU:C:2024:520, paragraph 96 and the case-law cited).

91 It is against that background that it is necessary, therefore, to examine the grounds of appeal challenging the legality of the resolution scheme at issue.

B. The first and fourth to sixth grounds of appeal, alleging infringement of Article 296 TFEU, Article 18 of the SRM Regulation, the SRB's duty of care, Article 47 of the Charter, Article 6 ECHR and the adversarial principle

92 By its first and fourth to sixth pleas, which it is appropriate to examine in the first place, the appellant submits, in essence, that access to the full version, in particular of the resolution scheme at issue and of valuations 1 and 2 was necessary in order for it to exercise its right to an effective remedy (fifth ground of appeal), that the statement of reasons for the resolution scheme at issue was inadequate and contradictory because of the information redacted from that resolution scheme and from valuations 1 and 2 (first and fourth grounds of appeal) and that, accordingly, the General Court should have ordered, by a measure of organisation of procedure, that full versions of those documents and of some additional documents be produced (sixth ground of appeal).

1. The fifth ground of appeal

93 By its fifth ground of appeal, the appellant submits that the General Court erred in law in its application of Article 296 TFEU and Article 47 of the Charter in holding, in paragraphs 354 to 402 of the judgment under appeal, that the confidential information contained in the resolution scheme at issue and valuation 2 was not necessary in order for it to exercise its right to an effective remedy. That ground of appeal comprises four parts.

(a) Arguments of the parties

94 By the first part of the fifth ground of appeal, the appellant claims that, contrary to what the General Court held in paragraphs 356 to 359 of the judgment under appeal, it was entitled, under Article 296 TFEU and Article 47 of the Charter, to receive the full version of the resolution scheme at issue, even if it was not the addressee of the scheme.

95 In that regard, it submits that, under Article 88(1) of the SRM Regulation, it should have been provided with the full text of the resolution scheme at issue for the purposes of bringing an action. In addition, it notes that the right to know the reasoning for an act applies not only to the

addressees of the decision in question, but also to third parties affected by it. In those circumstances, while, failing publication or notification of such a decision, it is for those parties to request the full text thereof, the time limit for bringing an action can begin to run only from the moment when those parties acquire precise knowledge of the content of the decision in question and of the reasons on which it is based, so that they can effectively exercise their right to bring an action. In 2017, the appellant specifically requested access to the full text of the resolution scheme at issue.

96 By the second part of the fifth ground of appeal, it submits that the General Court infringed Article 296 TFEU and Article 47 of the Charter in so far as it held, in paragraphs 381 and 388 of the judgment under appeal, that the publication of a redacted version of the resolution scheme at issue complied with Article 88 of the SRM Regulation.

97 In fact, from the version of the resolution scheme at issue which was initially published, the appellant was unable, inter alia, to find out the objectives of the resolution or access valuation 1. Even based on the current version of the resolution scheme at issue, the appellant is unable to know all those objectives, or to understand the scope of Banco Popular's liquidity crisis or the reasons why emergency liquidity assistance could not be provided and why a value of minus EUR 8.2 billion was used for the purposes of the write-down.

98 According to the appellant, the merits of that criticism are confirmed by the fact that, on 16 February 2018, the General Court ordered the SRB to produce a more complete version of those documents and by the fact that, in the appellant's view, the judgment under appeal is based mainly on information which was made available in 2018. Moreover, contrary to what the General Court held in paragraphs 389 to 393 of the judgment under appeal, the decisions of the SRB Appeal Panel of 28 November 2017 and 19 June 2018, which subsequently granted access to those documents, in no way took into account the time which had elapsed since the adoption of the contested resolution.

99 By the third part of its fifth plea in law, the appellant submits that the General Court infringed Article 296 TFEU and Article 47 of the Charter in holding, first, in paragraphs 394 and 395 of the judgment under appeal, that the rights of the defence had not been infringed, since the appellant had been able to bring an action and submit observations on the new versions of the resolution scheme at issue. However, according to the appellant, the mere fact that it was able to bring an action does not mean that it was able to exercise its rights of defence effectively. It considers that, in that regard, the persons concerned by a decision must have the right to request the full text of the decision for the purposes of bringing an action for annulment. Where not all the information is available, it is impossible to formulate and fully develop the appropriate pleas. Moreover, the appellant claims that it is very difficult to formulate new pleas after the application has been lodged before the General Court, which is confirmed by the fact that, in the present case, the two new pleas raised in its reply at first instance were not taken into account or were declared inadmissible by the General Court in paragraphs 701 to 704 and 710 to 713 of the judgment under appeal.

100 Secondly, according to the appellant, in paragraphs 396 and 397 of that judgment, the General Court wrongly held that the failure to state reasons could be remedied *a posteriori*, since the confidential information was originally contained in the resolution scheme at issue, in valuation 1 and in valuation 2, even though it was not communicated to the appellant.

101 By the fourth part of its fifth ground of appeal, the appellant submits that the General Court infringed Article 296 TFEU and Article 47 of the Charter in so far as it decided, by order of 9 June 2021, referred to in paragraph 723 of the judgment under appeal, that the full text of the resolution scheme at issue, of valuation 2 and of the assessment that Banco Popular was failing or likely to fail were not relevant to the resolution of the action. In that regard, the appellant submits that the purpose of the request for access to those documents was to enable it to raise new arguments, or even new pleas in law.

102 Moreover, the appellant submits that the full versions of those documents are well known not only to the SRB and the Commission, but also to the General Court, and therefore necessarily affect their perception of the appellant's arguments to some extent. Thus, in paragraph 278 of the judgment under appeal, the General Court relied on the annex to Banco Popular's letter to the ECB of 6 June 2017, even though that document had not been provided to the appellant. In those circumstances, failure to disclose those documents is contrary to the adversarial principle.

103 The Commission and Banco Santander contend that the fifth ground of appeal is inadmissible, on the ground that the appellant merely repeats or reproduces verbatim the pleas in law and arguments which it submitted to the General Court. The SRB contends that the third part of that ground of appeal is inadmissible in so far as the argument raised in support of that part, namely that the appellant needed all the information in order to be able to bring proceedings, was put forward for the first time at the appeal stage.

104 As regards the substance, the Commission, the SRB, the Kingdom of Spain and Banco Santander contend that the fifth ground of appeal is unfounded.

(b) Findings of the Court

(1) Admissibility

105 As regards, first of all, the objection of admissibility raised by the Commission and Banco Santander, it should be recalled that, in accordance with settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of that appeal, failing which the appeal or ground of appeal concerned will be inadmissible. An appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by the General Court, does not satisfy the requirement to state reasons under those provisions. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (judgment of 11 January 2024, *Planistat Europe and Charlot* v *Commission*, C-363/22 P, EU:C:2024:20, paragraphs 40 and 41 and the case-law cited).

106 However, provided that an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his or her appeal on pleas in law and

arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (judgments of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraph 51, and of 9 July 2020, *Haswani* v *Council*, C-241/19 P, EU:C:2020:545, paragraph 50 and the case-law cited).

107 In the present case, the fifth ground of appeal seeks, in essence, to call into question the General Court's decision on a number of questions of law which were submitted to it at first instance as regards, inter alia, the institutions' obligation to state reasons under Article 296 TFEU and the right to effective judicial protection guaranteed by Article 47 of the Charter. Furthermore, in so far as that ground of appeal contains precise indications regarding the contested paragraphs of the judgment under appeal and the arguments upon which it is based, it cannot be declared inadmissible in its entirety.

108 That said, next, in so far as by the second part of the fifth ground of appeal the appellant criticises paragraphs 389 to 393 of the judgment under appeal, on the ground that the SRB Appeal Panel, in its decisions of 28 November 2017 and 19 June 2018 in response to the appellant's requests for access to documents, took into account the time that had passed since the adoption of the resolution scheme at issue in order to assess the confidentiality of certain information, it does not claim, let alone prove, that the General Court distorted the evidence in holding, in paragraph 392 of the judgment under appeal, that in so far as those decisions were delivered more than six months and more than one year, respectively, after the resolution scheme at issue was adopted, the passage of time may have influenced the Panel's analysis of whether the conditions governing the confidentiality of the information concerned were satisfied.

109 According to settled case-law, it is apparent from Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal is to be limited to points of law and that the General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The assessment of the facts and evidence does not, save where the facts or evidence are distorted, constitute a point of law, which is subject, as such, to review by the Court of Justice on appeal (judgment of 25 January 2022, *Commission* v *European Food and Others*, C-638/19 P, EU:C:2022:50, paragraph 71 and the case-law cited).

110 The second part of the fifth ground of appeal is therefore inadmissible in so far as it is directed against paragraphs 389 to 393 of the judgment under appeal.

111 Lastly, as regards the third part of that ground of appeal, the SRB is wrong to claim that it is inadmissible on the ground that the appellant's argument that it needed all the information in order to be able to exercise its right to bring an action was put forward for the first time in its appeal. It is apparent from the application at first instance that, after the SRB had refused to provide that information, the appellant asked the General Court to order the SRB to produce, inter alia, the full version of the resolution scheme at issue and the full version of valuation 1 in order to be able to ascertain, in particular, that the conditions for the adoption of a resolution action, under Articles 18 and 20 of the SRM Regulation, were satisfied in the present case.

(2) Substance

112 By the four parts of its fifth plea, the appellant claims, in essence, that under Articles 296 TFEU and Article 47 of the Charter, it was entitled to have access to the full versions of the resolution scheme at issue and of the preparatory valuations, including the confidential information

contained therein. Without calling into question, as such, the adequacy of the statement of reasons for the resolution scheme at issue, it criticises the fact that certain reasons and information contained in the original version of that scheme were initially redacted from the version published on the internet and were only partially disclosed after the action was brought.

113 In that regard, it should be borne in mind, first of all, that the obligation to state reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (judgment of 18 January 2024, *Jenkinson* v *Council and Others*, C-46/22 P, EU:C:2024:50, paragraph 130 and the case-law cited).

114 It is settled case-law that, while the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measures and to enable the court having jurisdiction to exercise its power of review, that statement of reasons must, however, be adapted to the nature of the act at issue and to the context in which it was adopted. From that point of view, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons is sufficient must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question and, in particular, in the light of the interest which the addressees of the measure may have in obtaining explanations (see, to that effect, judgments of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraphs 85 and 87, and of 29 September 2022, *ABLV Bank* v *SRB*, C-202/21 P, EU:C:2022:734, paragraph 193 and the case-law cited).

115 Furthermore, the Court has already held that the degree of precision of the statement of the reasons for a decision must be weighed against practical realities and the time and technical facilities available for making the decision. Thus, when a measure is drafted, the EU institutions are not obliged to define their position on matters which are plainly of secondary importance or to anticipate potential objections (see, to that effect, judgments of 10 July 2008, *Bertelsmann and Sony Corporation of America* v *Impala*, C-413/06 P, EU:C:2008:392, paragraph 167 and the case-law cited, and of 6 November 2012, *Éditions Odile Jacob* v *Commission*, C-551/10 P, EU:C:2012:681, paragraph 48).

116 As regards Article 47 of the Charter, if the judicial review guaranteed by that article is to be effective, according to the settled case-law of the Court, the person concerned must be able to ascertain the reasons upon which the decision taken in relation to him or her is based, either by reading the decision itself or by requesting and obtaining notification of those reasons, without prejudice to the power of the court with jurisdiction to require the authority concerned to provide that information, so as to make it possible for him or her to defend his or her rights in the best possible conditions and to decide, with full knowledge of the relevant facts, whether there is any point in applying to the court with jurisdiction, and in order to put the latter fully in a position in which it may carry out the review of the lawfulness of the decision in question (see, to that effect, judgments of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 53 and the case-law cited, and of 24 November 2020, *Minister van Buitenlandse Zaken*, C-225/19 and C-226/19, EU:C:2020:951, paragraph 43).

117 As regards, in particular, notifying reasons to persons other than the addressee of a measure, the Court has already held that EU institutions, bodies, offices and agencies are, in principle, required, in accordance with the principle of the protection of business secrets, which is a general principle

of EU law, to which concrete expression is given inter alia in Article 339 TFEU, not to disclose to the competitors of a private operator confidential information which that operator has provided (judgment of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraph 109 and the case-law cited).

118 In order to ensure compliance with those obligations, the Court has held, in several fields of EU law, that the statement of reasons for an act adversely affecting a subject of the law which is premissed on a balancing of the relative position of private operators, may, to a certain extent, be limited in order to protect information relating to the operators which may be regarded as a business secret. That said, the obligation to respect business secrets must not deprive the obligation to state reasons of its essence. Therefore, although such a measure may, in the light of the obligation to respect business secrets, be sufficiently reasoned without including, inter alia, all the figures on which the reasoning is based, the statement of reasons must nevertheless disclose in a clear and unequivocal fashion that reasoning and the methodology used (see, to that effect, judgments of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraphs 108 to 111; of 21 December 2016, *Club Hotel Loutraki and Others* v *Commission*, C-131/15 P, EU:C:2016:989, paragraph 48; and of 15 July 2021, *Commission* v *Landesbank Baden-Württemberg and SRB*, C-584/20 P and C-621/20 P, EU:C:2021:601, paragraphs 110, 111 and 120).

119 Under the system put in place by the SRM Regulation, compliance with the requirements of professional secrecy provided for in Article 339 TFEU is clarified, inter alia, by the second subparagraph of Article 88(1) of that regulation, which prohibits the SRB from disclosing information which is subject to those requirements to another public or private entity, except where such disclosure is due for the purpose of legal proceedings. Furthermore, Article 90(4) of the SRM Regulation provides that persons who are the subject of the SRB's decisions are entitled to have access to the SRB's file, subject to the legitimate interest of other persons in the protection of their business secrets, and expressly states that the right of access to the file does not extend to confidential information or internal preparatory documents of the SRB.

120 As regards the first to third parts of that ground of appeal, which should be examined together, it follows from the foregoing considerations that the General Court was fully entitled to find, in paragraph 357 of the judgment under appeal, that, since the appellant was not the addressee of the resolution scheme at issue addressed to the FROB, it could not, under any circumstances, be given access to the entire resolution scheme.

121 Furthermore, in paragraph 381 of the judgment under appeal, the General Court found that the appellant had not put forward any specific argument in its action at first instance such as to show that the confidentiality claim in respect of the redacted information in the resolution scheme at issue was contrary to the principle of transparency. In those circumstances, it is without erring in law that the General Court held, in paragraph 388 of that judgment, that the case-law referred to in paragraphs 117 and 118 of the present judgment applies by analogy to the confidential information held by the SRB, for the purposes of the second subparagraph of Article 88(1) of the SRM Regulation. However, in accordance with that case-law, a third party concerned by such a scheme is not always entitled to obtain the full version of that scheme.

122 Contrary to what the appellant submits in the first part of the fifth ground of appeal, the fact that the prohibition on disclosing information which is subject to the requirements of professional secrecy applies, under the second subparagraph of Article 88(1) of the SRM Regulation, 'except where such disclosure is due for the purpose of legal proceedings' does not preclude that interpretation.

123 That caveat, which balances, on the one hand, the requirements of Article 339 TFEU and, on the other, those of Article 296 TFEU and Article 47 of the Charter, must be interpreted in the light of the case-law referred to in paragraphs 117 and 118 of this judgment. Thus, it must be held that the second subparagraph of Article 88(1) of the SRM Regulation required the SRB to provide a statement of reasons for the resolution scheme at issue which disclosed in a clear and unequivocal fashion the reasoning followed by the SRB and the methodology used, but not, however, to disclose information constituting business secrets and, in particular, all the figures mentioned in that scheme, which is corroborated by recital 116 of that regulation.

124 It follows from that recital that 'information on the contents and details of resolution plans and the result of any assessment of those plans may have far-reaching effects, in particular on the undertakings concerned', with the result that 'it is therefore necessary to ensure that there are appropriate mechanisms for maintaining the confidentiality of such information'.

125 Furthermore, the confidentiality required under the second subparagraph of Article 88(1) of the SRM Regulation, read in the light of recital 116 of that regulation, is intended not only to protect the specific interests of the undertakings directly concerned, but also to ensure that the SRB is able to perform effectively its tasks under that regulation. To that end, Article 34(1) and (2) of the SRM Regulation confers on the SRB, inter alia, the power to request credit institutions to provide it with all the information necessary for the performance of its tasks, without the requirements concerning the preservation of professional secrecy exempting those institutions from the duty to supply that information. The absence of confidence that the confidential information provided will, in principle, remain confidential is liable to compromise the smooth transmission of the confidential information that is necessary for the performance of those tasks (see, by analogy, as regards Directive 2004/39/EC on markets in financial instruments, judgment of 19 June 2018, *Baumeister*, C-15/16, EU:C:2018:464, paragraphs 31 to 33).

126 In the second part of the fifth ground of appeal, the appellant submits that the General Court held, in paragraphs 381 and 388 of the judgment under appeal, that the publication of a redacted version of the resolution scheme at issue complied with the requirements arising from the second subparagraph of Article 88(1) of that regulation. However, that argument is based on a manifestly incorrect reading of those paragraphs, which relate to the confidentiality of that scheme and do not address the adequacy of the reasons given in the non-confidential version of that scheme. The appellant's argument is also at variance with the consideration set out in paragraph 400 of that judgment, in which the General Court stated, in essence, that it had dealt with the arguments relating to the alleged inadequacy of the statement of reasons given in the non-confidential version of the resolution scheme at issue not in paragraphs 354 to 399 of the judgment under appeal, but in another part thereof, namely paragraphs 330 to 353.

127 As regards, in that context, paragraphs 394 and 395 of the judgment under appeal, while the General Court noted in those paragraphs that the successive publication of the non-confidential version of that scheme as well as less redacted versions of that scheme and valuations 1 and 2 enabled the appellant to bring an action and submit arguments based on those versions, its intention was to address the appellant's argument that it was allegedly impossible to defend its

rights without having access to the full versions of those documents. However, the General Court did not rule, in those paragraphs, that the mere fact that the appellant had brought an action was sufficient to prove that its right to an effective remedy had been respected.

128 Since, as has been pointed out in paragraph 126 of the present judgment, the General Court's assessment in paragraphs 354 to 399 of the judgment under appeal did not concern the alleged inadequacy of the disclosed statement of reasons for the resolution scheme at issue, the appellant's argument alleging that inadequacy, summarised in paragraphs 97 and 98 of the present judgment, is ineffective.

129 Lastly, the criticism levelled at paragraphs 396 and 397 of the judgment under appeal is also based on a manifestly incorrect reading of those paragraphs. Indeed, in finding that the SRB had not supplemented the statement of reasons of the resolution scheme at issue and valuations 1 and 2 with information which was not originally contained in those documents, the General Court was not accepting that the irregularity of a measure due to an inadequate statement of reasons can be remedied *a posteriori*. On the contrary, according to the General Court's findings, which are not disputed by the appellant, the SRB successively published on its website information which was originally contained in those documents, even though that information had initially been considered to be confidential.

130 Therefore, in so far as the first to third parts of the fifth ground of appeal are admissible, they are unfounded.

131 By the fourth part of that ground of appeal, the appellant claims that, by asking the General Court to order the SRB to produce the full text of the resolution scheme at issue, of valuation 2 and of the ECB's assessment that Banco Popular was failing or likely to fail, it was seeking to raise new arguments, or even new pleas in law. In those circumstances, it considers that the General Court infringed Article 296 TFEU and Article 47 of the Charter by deciding, in the order of 9 June 2021, referred to in paragraph 723 of the judgment under appeal, that the full text of those documents was not relevant to the resolution of the action at first instance.

132 In that regard, it should be noted that, in so far as the protection of confidential information may, under the second subparagraph of Article 88(1) of the SRM Regulation, interpreted in the light of the case-law referred to in paragraphs 117 and 118 of the present judgment, justify the redaction of certain figures in the statement of reasons for the resolution scheme at issue, that protection also justifies the appellant's being unable to dispute those figures. The fact that, in such a situation, certain figures cannot be disputed as such is a direct consequence of the need to reconcile the requirements, on the one hand, of Article 339 TFEU and, on the other, of Article 296 TFEU and Article 47 of the Charter, which, according to that case-law, justifies the non-disclosure of information constituting business secrets.

133 It must be stated that those figures are, however, still subject to the possibility of a challenge, in so far as, according to that case-law, the statement of reasons for an act adversely affecting a subject of the law and containing those figures must disclose in a clear and unequivocal fashion the reasoning and the methodology used. A deficiency in that regard confers on the subject of the law concerned the right to bring an action before the EU Courts.

134 In those circumstances, the General Court did not err in law in deciding, in the order of 9 June 2021, referred to in paragraph 723 of the judgment under appeal, that the full text of those documents was not relevant to the resolution of the action at first instance.

135 Furthermore, although the appellant submits that the undisclosed information influenced the decision of the General Court, it is sufficient to note that it does not in any way substantiate its argument and relies, in so far as it refers to paragraph 278 of the judgment under appeal, on a manifestly incorrect reading of that judgment. It is clear from the very wording of that paragraph that the General Court in no way relied on the annex to Banco Popular's letter to the ECB of 6 June 2017, but merely reproduced information regarding that annex which was contained in that letter. The appellant does not dispute that that letter was provided to it.

136 The fifth ground of appeal must therefore be rejected as in part inadmissible and in part unfounded.

2. The first ground of appeal

137 By its first ground of appeal, the appellant submits that the General Court wrongly held, in paragraphs 275 to 327 of the judgment under appeal, that the SRB had complied with its duty of care and with Article 296 TFEU as regards the assessment of the conditions for resolution laid down in points (a) and (b) of the first subparagraph of Article 18(1) of the SRM Regulation. That ground of appeal is divided into two parts.

(a) Arguments of the parties

138 In the context of the first part of the first ground of appeal, the appellant submits that, contrary to what the General Court held in paragraphs 292 to 302 of the judgment under appeal, the SRB infringed points (a) and (b) of the first subparagraph of Article 18(1) of the SRM Regulation, its duty of care and the obligation to state reasons under Article 296 TFEU, in that it did not capture thoroughly and impartially all the facts relating to Banco Popular's liquidity crisis or specify the reasons why it considered that that crisis was not temporary.

139 According to the appellant, failure to comply with the liquidity coverage requirement was not a reason for resolution, but had the consequence that the ECB should have allowed Banco Popular time to restore its position and could, if necessary, impose sanctions, which it did not do. The appellant considers that the only factor taken into account by the SRB was whether or not emergency liquidity assistance could be provided on 7 June 2017, which proves, according to the appellant, that the crisis was temporary. However, according to the EBA Guidelines of 6 August 2015 on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail under Article 32(6) of Directive 2014/59 (EBA/GL/2015/07), referred to in paragraph 294 of the judgment under appeal, a liquidity crisis cannot lead to a determination that an institution is failing or likely to fail unless that crisis is not temporary. Referring to the situation of another bank, the appellant maintains that a liquidity crisis must last for more than five months in order no longer to be regarded as temporary.

140 By the second part of the first ground of appeal, the appellant claims that the judgment under appeal is vitiated by an error of law in the application of the SRB's duty of care and of Article 296 TFEU, in so far as the General Court held, in paragraph 303 of that judgment, that the circumstances and reasons which led the ECB to conclude that Banco Popular was failing were irrelevant. In view of the SRB's broad discretion under point (b) of the first subparagraph of Article 18(1) and point (c) of the first subparagraph of Article 18(4) of the SRM Regulation, the

SRB is required to examine all the relevant information thoroughly and impartially and to give reasons for its decision in the light of that information. Thus, the SRB cannot simply make reference to the ECB's assessment that Banco Popular was failing or likely to fail.

141 In particular, the General Court should have investigated, contrary to what it held in paragraph 315 of the judgment under appeal, the reasons why emergency liquidity assistance could not be provided to Banco Popular and whether it was possible for it to obtain further emergency liquidity assistance. To that end, the SRB should have considered the amount of emergency liquidity assistance which had been authorised, the amount which had been used, the amount which was available and the additional amount of emergency liquidity assistance likely to be requested. In that regard, the General Court's finding that the provision of emergency liquidity does not fall within the remit of the SRB confirms that the SRB failed to observe its duty of care.

142 The Commission contends that the first ground of appeal is inadmissible, in so far as the appellant merely repeats or reproduces verbatim the pleas in law and arguments raised at first instance, without explaining how the General Court erred in law. According to the SRB, the appellant claims, for the first time at the appeal stage, that non-compliance with the liquidity coverage ratio is not a reason for resolution, that the ECB did not sanction Banco Popular for non-compliance with the liquidity coverage requirement and that the request for additional emergency liquidity assistance shows that the liquidity crisis was temporary.

143 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander consider that the fourth ground of appeal is unfounded.

(b) Findings of the Court

(1) Admissibility

144 By its first ground of appeal, the appellant seeks, in essence, to challenge the merits of the grounds on which the General Court rejected its eighth plea at first instance, alleging that the SRB had infringed points (a) and (b) of the first subparagraph of Article 18(1) of the SRM Regulation, its duty of care and the obligation to state reasons under Article 296 TFEU. In so far as that ground of appeal contains precise indications regarding the contested paragraphs of the judgment under appeal and the arguments upon which it is based, in accordance with the case-law referred to in paragraph 106 of the present judgment, it cannot be declared inadmissible in its entirety.

145 As regards, more specifically, the arguments put forward in the first part of the first ground of appeal, relating to the fact that the ECB did not impose any sanctions on Banco Popular for failing to comply with the liquidity coverage requirement and to the request for additional emergency liquidity assistance, those arguments call into question specific grounds of the judgment under appeal. In those circumstances, the SRB wrongly contends that they are new arguments which are inadmissible in the context of the appeal.

146 An appellant is entitled to lodge an appeal relying on grounds which arise from the judgment under appeal itself and seek to criticise, in law, its correctness (judgment of 25 January 2022, *Commission* v *European Food and Others*, C-638/19 P, EU:C:2022:50, paragraph 77 and the case-law cited).

(2) Substance

147 As a preliminary point, it should be noted that, while the appellant's first ground of appeal alleges infringement of points (a) and (b) of the first subparagraph of Article 18(1) of the SRM Regulation, of the duty of care and of the obligation to state reasons under Article 296 TFEU, it does not challenge the General Court's interpretation of points (a) and (b) of the first subparagraph of Article 18(1) of the SRM Regulation, but merely, in essence, disputes the merits of the decision according to which the SRB observed its duty of care and fulfilled its obligation to state reasons when it considered that the conditions for resolution set out in points (a) and (b) of the first subparagraph of Article 18(1) of the SRM Regulation were satisfied in the present case.

(i) The first part of the first ground of appeal

148 The appellant submits that, contrary to what the General Court held in paragraphs 292 to 302 of the judgment under appeal, the SRB infringed its duty of care and its obligation to state reasons by not having captured all the facts relating to Banco Popular's liquidity crisis or stated the reasons why that crisis should be regarded as not being temporary.

149 It must be held that that line of argument is based on a manifestly incorrect reading of the judgment under appeal and of the resolution scheme at issue.

150 In the first place, it is apparent from paragraphs 276 to 302 of the judgment under appeal that, according to the findings of the General Court, the SRB relied on multiple elements to conclude that, due to liquidity problems, Banco Popular would, in the near future, no longer be able to pay its debts or other liabilities as they fell due and, consequently, was likely to fail, for the purposes of point (a) of the first subparagraph of Article 18(1) and point (c) of the first subparagraph of Article 18(4) of the SRM Regulation.

151 Thus, as regards the changes to Banco Popular's liquidity situation, the General Court noted, first of all, in paragraph 290 of the judgment under appeal, that in recital 23 of the resolution scheme at issue, the SRB had found, referring to the assessment carried out by the ECB, that Banco Popular's liquidity situation had significantly deteriorated since October 2016 as a result of deposit outflows across all customer segments. The General Court added that, in that recital, the SRB had inferred from those changes that Banco Popular did not have sufficient options to restore its liquidity position in order to ensure that it would be in a position to meet its liabilities as they fell due. Next, in paragraph 291 of that judgment, the General Court took account of the fact that, in recital 24 of the resolution scheme at issue, the SRB listed the various events which had led, since February 2017, to a rapid deterioration in Banco Popular's liquidity position and to an increase in deposit outflows. Finally, in paragraph 292 of that judgment, it stated that, in addition, the SRB had indicated that the bank had not met the liquidity coverage requirement since 12 May 2017, and that it was still unable to meet that requirement on the date that resolution scheme was adopted.

152 In those circumstances, the appellant wrongly submits that the only factor taken into consideration was that no emergency liquidity assistance could be provided on 7 June 2017. On the contrary, since that factor was mentioned in recital 26 of the resolution scheme, it was only for the sake of completeness that the SRB took it into account in relation to the elements referred to in paragraph 151 of this judgment, which are listed in recitals 23 and 24 of that scheme.

153 Next, it follows from those findings that, contrary to what the appellant submits, the SRB and the General Court did not hold that non-compliance with the liquidity coverage requirement constituted, as such, a reason for resolution. That non-compliance was taken into account, together with other circumstances, to conclude that, on account of its liquidity problems, Banco Popular was failing or likely to fail, for the purposes of point (a) of the first subparagraph of Article 18(1) and point (c) of the first subparagraph of Article 18(4) of the SRM Regulation, which is corroborated by the considerations set out in paragraphs 294 to 299 of the judgment under appeal.

154 In those paragraphs, the General Court stated, taking into account the various elements referred to in paragraph 151 of this judgment, that the SRB complied, as required under Article 5(2) of the SRM Regulation, with the EBA Guidelines of 6 August 2015 on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail under Article 32(6) of Directive 2014/59. According to those guidelines, the ability to meet the minimum requirements for liquidity is one of the elements to be taken into account for that purpose.

155 Lastly, having regard to all the elements referred to in paragraph 151 of this judgment, the appellant is wrong to claim that the SRB did not specify the reason why that liquidity crisis should be regarded as not being temporary. As the General Court rightly noted in paragraph 302 of the judgment under appeal, it is clear from those elements that Banco Popular's liquidity problems could not be regarded as merely temporary. The General Court also rightly held in that paragraph that the foregoing was confirmed by the fact – taken into account, moreover, in recital 36 of the resolution scheme at issue – that the bank itself had informed the ECB, by letter of 6 June 2017, that it was failing or likely to fail due to liquidity problems.

156 It must be held, therefore, that the first part of the first ground of appeal is unfounded.

(ii) The second part of the first ground of appeal

157 The appellant submits that, in paragraphs 303 and 315 of the judgment under appeal, the General Court failed to have regard to the fact that the SRB is required – pursuant to point (b) of the first subparagraph of Article 18(1) of the SRM Regulation, to its duty of care and to Article 296 TFEU – to examine thoroughly and impartially all the relevant information and to give reasons for its decision in the light of that information.

158 As regards paragraph 303 of the judgment under appeal, while the appellant rightly observes that the General Court held that the circumstances and reasons which led the ECB to conclude that Banco Popular was failing were irrelevant, it is important to state that the General Court used the same reasoning in its response to the appellant's argument that Banco Popular's liquidity problems were not attributable to that bank, but were the result of other events.

159 It was in response to that argument that the General Court found, in essence, that the reasons for Banco Popular's failure were irrelevant for the purposes of assessing the legality of the resolution scheme at issue in the light of Article 18 of the SRM Regulation. In those circumstances, it cannot be held that, in that paragraph, the General Court considered that the SRB could merely make reference to the ECB's assessment that Banco Popular was failing or likely to fail without seeking to obtain information in that regard. This is all the more so because, as is apparent from the analysis of the first part of the first ground of appeal, the General Court noted, in particular in

paragraphs 291 and 302 of the judgment under appeal, that the SRB's assessment was based not only on that assessment by the ECB but also on widely known events and on Banco Popular's letter of 6 June 2017 informing the ECB that it was failing or likely to fail due to liquidity problems.

160 It is true that the General Court concluded, in paragraph 315 of the judgment under appeal, that the appellant could not criticise the SRB for having failed to examine, in the resolution scheme at issue, whether it was possible for Banco Popular to obtain further emergency liquidity assistance.

161 However, in reaching that conclusion, the General Court noted in paragraphs 311 and 313, first, that it followed from Article 3.2(d) of the resolution scheme at issue that emergency liquidity assistance would have been insufficient in the light of the rapidity of the deterioration of Banco Popular's liquidity position, second, that further emergency liquidity assistance was no longer possible following the finding of that bank's failure on the day after the first emergency liquidity assistance was provided and, third, that the SRB played no role in the provision of emergency liquidity assistance, which falls within the remit of the national central banks.

162 In those circumstances, the General Court was entitled to hold, without committing an error of law, that the SRB had examined, to the requisite legal standard, whether it was possible for Banco Popular to receive additional emergency liquidity assistance.

163 In any event, it cannot be alleged that the SRB failed to examine the reasons why Banco Popular did not receive additional emergency liquidity assistance. Under the first subparagraph of Article 18(1) of the SRM Regulation, the adoption of a resolution scheme is subject to the condition, first, that the entity concerned is failing or is likely to fail; second, that, having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures taken in respect of the entity would prevent its failure within a reasonable timeframe; and, third, that a resolution action is necessary in the public interest. However, that provision makes no reference either to the reasons for the entity's failure or to the reasons for the absence of alternative measures.

164 Taking those reasons into account would, moreover, be incompatible with the objectives of the SRM Regulation which aims, as is apparent in particular from recital 58 thereof, to maintain financial stability, ensure the continuity of essential financial services and protect depositors. In particular, the circumstances which may have caused the failure of the bank concerned cannot prevent the SRB from adopting a resolution action, when all the conditions laid down in the first subparagraph of Article 18(1) of that regulation are met, in that the bank concerned is failing or likely to fail, there are no alternative solutions and, in particular, a resolution action in respect of that entity is in the public interest.

165 In the light of the foregoing considerations, the second part of the first ground of appeal is unfounded. Consequently, that ground of appeal in its entirety must be rejected as unfounded.

3. The fourth ground of appeal

166 The fourth ground of appeal alleges infringement of Article 47 of the Charter, Article 296 TFEU and the rules on the burden of proof. The appellant submits that the General Court wrongly held, in paragraphs 330 to 353 of the judgment under appeal, that the statement of reasons for the resolution scheme at issue was neither contradictory nor insufficient. That ground of appeal is divided into two parts.

(a) Arguments of the parties

167 By the first part of the fourth ground of appeal, the appellant submits that, contrary to what the General Court held in paragraphs 341 to 344 of the judgment under appeal, the statement of reasons for the resolution scheme at issue is vitiated by a contradiction, in that the SRB, on the one hand, attributed to Banco Popular a negative value of minus EUR 8.2 billion in the exercise of the power to write down capital instruments, in Article 6.3 and 6.4 of that scheme, and on the other, considered in valuation 2, which forms part of that scheme, that the bank was solvent.

168 The second part of that ground of appeal alleges that the General Court infringed Article 296 TFEU in so far as it held, in paragraphs 345 to 353 of the judgment under appeal, that the statement of reasons in recitals 23, 24 and 26(c) of the resolution scheme at issue was sufficient to explain the severity of Banco Popular's liquidity crisis. However, the appellant considers that the information contained in those recitals is generic and could apply to any liquidity crisis. In order to understand the liquidity crisis faced by Banco Popular, an economic expert should have been provided with additional information and, in particular, figures that accurately reflected the liquidity situation of that bank on 6 and 7 June 2017. Furthermore, it is not clear from the statement of reasons for the resolution scheme at issue why the Bank of Spain did not provide additional emergency liquidity assistance.

169 The SRB and Banco Santander contend that both parts of the fourth ground of appeal are inadmissible, on the ground that the appellant merely repeats or reproduces verbatim the pleas in law and arguments which it submitted to the General Court, without alleging any error of law in the judgment under appeal.

170 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander consider that the fourth ground of appeal is unfounded.

(b) Findings of the Court

171 As regards the first part of the fourth ground of appeal, it should be recalled that, in paragraphs 342 to 344 of the judgment under appeal, the General Court has already held that the finding that Banco Popular was solvent, based on its book value, did not conflict with the finding that it had a negative economic value of minus EUR 8.2 billion. In its appeal, the appellant merely reiterates its argument that the grounds are contradictory, without explaining why, in its view, the General Court was wrong to hold, in paragraphs 342 to 344 of that judgment, that a distinction must be drawn between the book value and the economic value of Banco Popular.

172 Accordingly, it must be held that the first part of the fourth ground of appeal, in so far as it merely reiterates the arguments already submitted to the General Court, is inadmissible in accordance with the case-law referred to in paragraph 105 of the present judgment.

173 As regards the admissibility of the second part of its fourth ground of appeal, it should be noted that, without merely reiterating the arguments put forward at first instance, the appellant criticises the General Court's assessment of the statement of reasons contained in recitals 23, 24 and 26(c) of the resolution scheme at issue, on the ground that, contrary to what the General Court found, the figures which had been redacted from the resolution scheme at issue for reasons of confidentiality were necessary in order to analyse and understand Banco Popular's liquidity crisis.

174 Accordingly, the objection of inadmissibility raised by the SRB and Banco Santander must be rejected in so far as it relates to the second part of the fourth ground of appeal.

175 As to the substance, it is apparent from recitals 23 to 25 and 26(c) of the resolution scheme at issue, first of all, that Banco Popular's liquidity situation had significantly deteriorated since October 2016 as a result of deposit outflows across all customer segments, and that the bank did not have sufficient options to restore its liquidity position in order to ensure that it would be in a position to meet its liabilities as they fell due; secondly, that the deterioration in its liquidity situation led the ratings agencies, one after the other, to downgrade the bank's rating; and lastly, that, in view of that deterioration, the ECB had concluded that Banco Popular was failing or was likely to fail. It must be stated that the information in those recitals shows clearly and unequivocally the reasoning followed by the SRB, thus complying with the requirements which the statement of reasons for an act must satisfy where confidential information is involved, having regard to the second subparagraph of Article 88(1) of the SRM Regulation, interpreted in the light of the case-law referred to in paragraphs 117 and 118 of this judgment.

176 Consequently, the General Court did not infringe Article 296 TFEU in holding, in paragraphs 345 to 353 of the judgment under appeal, that the information contained in recitals 23 to 25 and 26(c) of the resolution scheme at issue explained the severity of Banco Popular's liquidity crisis as a result of the deposit withdrawals which had led to the finding, by the ECB and the SRB, that the bank was failing or likely to fail, without there being any need to know the exact amount of those withdrawals.

177 It appears even less necessary to know those amounts, or the other figures referred to by the appellant, given that recital 36 of that scheme states that Banco Popular's board of directors agreed with the ECB's assessment that Banco Popular was failing or likely to fail, which the appellant does not dispute.

178 It follows that the second part of the fourth ground of appeal is unfounded.

179 Accordingly, the fourth ground of appeal must be rejected as in part inadmissible and in part unfounded.

4. The sixth ground of appeal

180 By its sixth ground of appeal, the appellant claims that the General Court infringed Article 47 of the Charter and Article 6 ECHR as well as the adversarial principle, in so far as it rejected, in paragraphs 721 to 728 of the judgment under appeal, the measures of inquiry requested, on the ground that they were not relevant, or that the information in the case file was sufficient to allow the General Court to give a ruling. That ground of appeal is divided into three parts.

(a) Arguments of the parties

181 By the first part of the sixth ground of appeal, the appellant submits that, in order to comply with the adversarial principle and the principle of effective judicial protection, the General Court should have ordered the SRB to produce the full text of the resolution scheme at issue, valuations 1 and 2, the ECB's assessment that Banco Popular was failing or likely to fail and the 2016 resolution plan. Indeed, the adversarial principle requires that the parties to a case must have the right to examine all the documents or observations submitted to the court for the

purpose of influencing its decision, and to comment on them. While the General Court had a discretion to assess the relevance of the evidence, it cannot consider that the contested act itself constitutes evidence that is not relevant to the resolution of the dispute. In that regard, the possible confidential nature of the documents requested is, according to the appellant, irrelevant, since confidentiality undertakings given under Article 103(3) of the Rules of Procedure of the General Court enable the interests at stake to be reconciled.

182 In support of the second part of that ground of appeal, the appellant considers that the General Court should have accepted the testimonial evidence of the expert who signed the economic report which it had submitted in support of its action at first instance, in so far as, in the appellant's view, that evidence was necessary to verify and understand the technical and complex information contained in the resolution scheme at issue and in valuations 1 and 2 and, in any event, to formulate effective pleas.

183 By the third part of that ground of appeal, the appellant submits that the General Court should have ordered the SRB to produce various documents which would have made it possible to comment on whether a liquidity crisis constitutes a reason for resolution, or whether there were other more proportionate alternatives to resolution, such as emergency liquidity assistance.

184 The Commission and Banco Santander contend that the sixth ground of appeal is inadmissible, in so far as the appellant merely repeats or reproduces verbatim the pleas and arguments put forward at first instance, and is asking the Court of Justice to substitute its own assessment of the facts and the evidence for that of the General Court. In addition, whether or not the evidence before it is sufficient is a matter to be appraised by it alone and is not subject to review by the Court of Justice on appeal, except where that evidence has been distorted or the substantive inaccuracy of the findings of the General Court is apparent from the documents in the file. However, the appellant simply expresses its disagreement with the General Court's assessment, without alleging any such distortion or substantive inaccuracy.

185 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander contend that the appellant's argument is unfounded.

(b) Findings of the Court

(1) Admissibility

186 As regards the objections of inadmissibility raised by the Commission and Banco Santander, it should be noted that, by its sixth ground of appeal, the appellant disputes the General Court's interpretation and application of EU law in paragraphs 721 to 728 of the judgment under appeal. In accordance with the case-law referred to in paragraph 106 of this judgment, the sixth ground of appeal cannot, therefore, be declared inadmissible in its entirety.

187 That being said, the Commission and Banco Santander rightly recall that the General Court is the sole judge of any need to supplement the information available to it in respect of the cases before it. Thus, the sufficiency of the evidence before it is a matter to be appraised by it alone and is not subject to review by the Court of Justice on appeal, except where that evidence has been distorted or the inaccuracy of the findings of the General Court is apparent from the documents in the case file (judgment of 26 January 2017, *Mamoli Robinetteria* v *Commission*, C-619/13 P, EU:C:2017:50, paragraph 117).

188 In the second and third parts of the sixth ground of appeal, the appellant merely claims that the General Court should have ordered certain measures of inquiry, without, however, alleging that the General Court distorted the facts or evidence, or that the facts or evidence were inaccurate.

189 The second and third parts of the sixth ground of appeal are therefore inadmissible.

(2) Substance

190 As regards the substance of the first part of that ground of appeal, in so far as the appellant alleges a breach of Article 6 ECHR, it should be recalled that whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of EU law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law. Thus, the review of the legality of acts of the European Union must be undertaken solely in the light of the fundamental rights guaranteed by the Charter, in particular Article 47 thereof (see, to that effect, judgment of 15 February 2016, *N.*, C-601/15 PPU, EU:C:2016:84, paragraphs 45 and 46 and the case-law cited).

191 As regards the adversarial principle that forms part of the rights of the defence guaranteed by Article 47 of the Charter, it must be held that the first part of the sixth ground of appeal is indissociable, first, from the argument put forward in support of the fifth ground of appeal, in that the appellant considers that the General Court should have ordered the SRB to produce the full text of the resolution scheme at issue, valuations 1 and 2, the ECB's assessment that Banco Popular was failing or likely to fail and the 2016 resolution plan. However, as has been held in paragraphs 117 and 118 of this judgment, in view of the confidential information contained in those documents, that argument cannot succeed.

192 Secondly, the argument relating to a breach of the adversarial principle is indissociable, in essence, from the argument that the General Court based its examination of legality on information contained in those documents which had not been provided to the appellant. However, as pointed out in paragraph 135 of this judgment, such a claim is entirely speculative and, moreover, is based on a manifestly incorrect reading of paragraph 278 of the judgment under appeal. In those circumstances, the argument relating to an alleged breach of the adversarial principle is unfounded.

193 It follows that the sixth ground of appeal must be rejected as in part inadmissible and in part unfounded.

C. The seventh ground of appeal, alleging infringement of Articles 17 and 52 of the Charter and Article 5(4) TEU

194 By its seventh ground of appeal, the appellant submits that the General Court infringed Articles 17 and 52 of the Charter and Article 5(4) TEU in so far as, in paragraphs 150 to 219 of the judgment under appeal, it rejected the plea of illegality, raised under Article 277 TEU, in respect of Articles 15 and 22 of the SRM Regulation, alleging disproportionate interference with the right to property and the lack of adequate compensation. That ground of appeal is divided into five parts.

1. Arguments of the parties

195 By the first to third parts and the fifth part of the seventh ground of appeal, the appellant submits, first of all, that in paragraphs 171 et seq. of the judgment under appeal, the General Court wrongly relied, in particular, on the judgment of 19 July 2016, *Kotnik and Others* (C-526/14, EU:C:2016:570), in order to hold that Articles 15 and 22 of the SRM Regulation did not constitute a disproportionate interference with the shareholders' right to property, since that case-law relates to banks facing solvency problems or losses which could lead to a capital shortfall and must be borne, in the first place, by the shareholders. Moreover, contrary to what the General Court held, in particular, in paragraphs 171, 185 and 204 of the judgment under appeal, a resolution action does not constitute an alternative solution for a solvent bank, since the assets of such a bank would exceed its liabilities.

196 Next, the appellant challenges the validity of the General Court's rejection, in paragraphs 177 to 181 of the judgment under appeal, of the argument that Articles 15 and 22 of the SRM Regulation did not allow account to be taken of the relevant circumstances of the case and, in particular, of the bank's solvency or its compliance with the capital ratio requirements. Articles 15, 21 and 22 of the SRM Regulation are worded so broadly that it is possible, in practice, to exercise the power to write down capital instruments, even though the write-down of Banco Popular's share capital would not resolve the liquidity problems of a solvent bank which, in the absence of a capital shortfall, would not suffer losses that would have to be borne by shareholders.

197 The appellant also criticises paragraphs 169 and 175 to 189 of the judgment under appeal on the ground that Articles 15 and 22 of the SRM Regulation do not provide for different solutions for, on the one hand, banks that are insolvent, and on the other, solvent banks that have liquidity issues. None of the resolution tools provided for in Article 22 of that regulation is designed to resolve a liquidity crisis affecting a solvent bank. In the appellant's view, there are less intrusive alternative solutions to address such a crisis, such as providing emergency liquidity assistance or granting a moratorium on payments.

198 Lastly, in paragraphs 201 et seq. of the judgment under appeal, the General Court wrongly held that Articles 20(16) and 76(1)(e) of the SRM Regulation provide for adequate compensation to guarantee that the interference with shareholders' right to property is proportionate, by ensuring that shareholders are not treated less favourably than they would have been in an insolvency scenario. In so far as the calculation of the compensation provided for by those provisions presupposes the institution's insolvency, even if the bank were solvent and did not suffer losses, those provisions do not take account of the specific circumstances of the expropriated assets or of the diversity of situations which may arise, contrary to what is required by the case-law of the European Court of Human Rights (ECtHR) in the judgments of 21 May 2002, *Jokela v. Finland* (CE:ECHR:2002:0521JUD002885695, § 53), and of 25 March 1999, *Papachelas v. Greece* (CE:ECHR:1999:0325JUD003142396, § 53)

199 In that context, the appellant also criticises paragraphs 191 and 211 to 219 of the judgment under appeal, on the ground that the SRM Regulation does not, in its view, guarantee equal treatment for all shareholders or the right of shareholders and creditors to fair compensation. The compensation provided for in Article 20(11) and (12) of that regulation, in addition to that provided for in Article 20(16), does not apply to all resolution tools, but establishes a difference in treatment according to the resolution tool applied.

200 Moreover, it considers that the General Court infringed the principle of proportionality in holding, in paragraph 169 of the judgment under appeal, that the interference with the right to property resulting from the write-down of capital instruments was justified provided the conditions for resolution laid down in Article 18 of the SRM Regulation were met.

201 By the fourth part of the seventh ground of appeal, the appellant alleges infringement of the principle of proportionality enshrined in Article 52(1) of the Charter and in Article 5(4) TEU, on the ground that the General Court did not take account of the fact that Articles 15 and 22 of the SRM Regulation do not provide for mechanisms to ensure the proportionality of the exercise of the power to write down capital instruments in urgent cases. In essence, it submits that under those provisions, in urgent cases, the power to write down capital instruments may be exercised without valuing the bank's assets and liabilities. However, in the event that an *ex post* definitive valuation subsequently reveals that the net value of the bank's assets exceeds that of its liabilities, the write-down would ultimately be excessive, if not unnecessary.

202 The SRB and Banco Santander contend that the seventh ground of appeal is inadmissible, on the ground that the appellant merely reiterates the arguments already submitted to the General Court and does not identify any error of law committed by the latter. The Council contends that, in its seventh ground of appeal, the appellant appears to be attempting to call into question the validity not only of Articles 15 and 22 of the SRM Regulation, as it did at first instance, but also of other provisions of that regulation, in particular Articles 18, 20 and 21 thereof, even though it did not challenge the legality of those articles before the General Court.

203 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander consider that the seventh ground of appeal is unfounded.

2. Findings of the Court

(a) Admissibility

204 As regards the objection of inadmissibility raised by the SRB and Banco Santander, it should be noted that, by its seventh ground of appeal, the appellant submits that the General Court wrongly rejected its plea of illegality raised on the basis of Article 277 TFEU against Articles 15 and 22 of the SRM Regulation, in so far as those articles infringe the right to property guaranteed by Article 17 of the Charter and, more particularly, the principle of proportionality enshrined in Article 51(1) of the Charter and in Article 5(4) TEU, specifying the paragraphs of the judgment under appeal that are contested and the arguments relied on. Accordingly, that ground of appeal cannot be declared inadmissible in its entirety.

205 As to the objection of inadmissibility raised by the Council, although the appellant also refers to Articles 18, 20 and 21 of the SRM Regulation, it does not put forward new arguments calling into question the legality of those articles, but takes them into account for the purposes of supporting its arguments relating to the alleged illegality of Articles 15 and 22 of that regulation, which it had already raised before the General Court.

206 That being said, as the Advocate General stated, in essence, in point 105 of her Opinion, the fourth part of that ground of appeal is inadmissible in so far as, contrary to Article 169(2) of the Rules of Procedure of the Court of Justice, the appeal does not identify precisely which points in the grounds of the judgment under appeal it is challenging. That lack of precision impedes the review of legality which the Court of Justice is to carry out.

207 In addition, as the Advocate General observed in the same point of her Opinion, the fifth part of the seventh ground of appeal is in part inadmissible in so far as it refers to discrimination arising from the choice of the resolution tool. In view of the fact that, as is apparent from paragraphs 190 et seq. of the judgment under appeal, the appellant had relied at first instance not on such discrimination between different resolution tools, but on discrimination between different categories of creditors, this is a new argument. It must therefore be declared inadmissible at the appeal stage.

(b) Substance

208 By its seventh ground of appeal, the appellant submits that the General Court wrongly rejected, in paragraphs 150 to 219 of the judgment under appeal, its plea of illegality against Articles 15 and 22 of the SRM Regulation, alleging a disproportionate interference with the right to property and a lack of adequate compensation for shareholders.

209 As is apparent from the judgment under appeal, that plea of illegality was directed, more specifically, against Article 15(1)(a) of that regulation, which lays down the general principle of resolution, according to which the shareholders of the institution under resolution bear first losses, and against Article 22(1) of that regulation.

210 The latter provision provides, in application of the principle referred to in the previous paragraph, that where the SRB decides to apply a resolution tool and that resolution action would result in losses being borne by creditors or their claims being converted, the SRB must, immediately before or together with the application of the resolution tool, instruct the national resolution authorities to exercise the power to write down and convert relevant capital instruments in accordance with Article 21 of that regulation.

211 As regards the right to property enshrined in Article 17 of the Charter, it should be recalled that, under the first paragraph of that article, 'everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.'

212 Capital instruments, such as shares, come within the scope of Article 17(1) of the Charter, in that they have an asset value and confer an established legal position on their holder enabling that holder autonomously to exercise the rights which flow from it (see, to that effect, judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraphs 40 and 43).

213 In accordance with Article 52(3) of the Charter, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, the meaning and scope of those rights are to be the same as those laid down by that convention. However, that provision does not prevent EU law from providing more extensive protection. It follows that, for the purposes of interpreting Article 17 of the Charter, the case-law of the European Court of Human Rights relating to

Article 1 of Additional Protocol No 1 to the ECHR, signed in Paris on 20 March 1952, which enshrines the protection of the right to property, must be taken into account as the minimum threshold of protection (see, to that effect, judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 72 and the case-law cited).

214 As the European Court of Human Rights has consistently held with regard to Article 1 of Additional Protocol No 1 to the ECHR, it should be noted that Article 17(1) of the Charter contains three distinct rules. The first, which is expressed in the first sentence thereof and is of a general nature, gives concrete expression to the principle of respect for the right to property. The second, set out in the second sentence of that paragraph, refers to a person being deprived of that right and subjects that deprivation to certain conditions. The third, which is contained in the third sentence of that paragraph, recognises States' power, inter alia, to regulate the use of property in so far as is necessary for the general interest. However, these are not unrelated rules. The second and third rules relate to specific examples of infringements of the right to property, and are to be interpreted in the light of the principle enshrined in the first rule (judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 38).

215 According to the case-law of the Court of Justice and that of the European Court of Human Rights, in order to establish whether there has been such a deprivation of property, it is necessary to examine not only whether there has been a formal dispossession or expropriation of property, but also whether the situation at issue amounted to de facto expropriation (judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 44; ECtHR, 28 July 1999, *Immobiliare Saffi v. Italy*, CE:ECHR:1999:0728JUD002277493, § 46; ECtHR, 29 March 2010, *Depalle v. France*, CE:ECHR:2010:0329JUD003404402, § 78).

216 In the present case, the resolution action referred to in Article 22(1) of the SRM Regulation, read in conjunction with Article 21 of that regulation, consists of the write-down and/or conversion of capital instruments, without, however, involving a formal dispossession or expropriation of the instruments concerned. In particular, that measure does not deprive the holders – in a compulsory, complete and definitive manner – of the rights deriving from those instruments (see, by analogy, judgment of 21 May 2019, *Commission v Hungary (Usufruct over agricultural land)*, C-235/17, EU:C:2019:432, paragraph 81).

217 As regards the question whether the adoption of such a measure might entail a de facto expropriation, in the event of a substantial or even total write-down of capital instruments, it should be recalled that the exercise of the power to write down and convert capital instruments presupposes, as is clear from Article 22(2) of the SRM Regulation, read in conjunction with Article 18(6)(b) of that regulation, that the conditions for the adoption of a resolution scheme provided for in points (a) to (c) of the first subparagraph of Article 18(1) of that regulation are satisfied, namely, first, that the entity in question is failing or is likely to fail, secondly, that there is no reasonable prospect that any alternative private sector measures or supervisory action would prevent its failure within a reasonable timeframe and, thirdly, that adopting a resolution action is necessary in the public interest.

218 It follows from Article 18(5) and (8) of that regulation that, where the first two conditions, referred to in the preceding paragraph, are met, namely that the entity concerned is failing or is likely to fail and that there are no alternative measures, that entity is to be wound up in an orderly manner in accordance with the applicable national law if the resolution of that entity is not in the public interest. It is thus apparent that, while point (c) of the first subparagraph of Article 18(4) of the SRM Regulation provides that the entity concerned is to be deemed to be failing or likely to fail

where that entity is, or will in the near future, be unable to pay its debts and liabilities as they fall due, that regulation provides that a resolution scheme should be adopted only in the event of an exceptionally serious liquidity crisis which threatens the very existence of that entity, and to which there is no solution other than resolution or liquidation under normal insolvency proceedings.

219 In those circumstances, it must be held that the loss in value of capital instruments does not arise from the exercise of the power to write down and convert capital instruments under Article 22(1) of the SRM Regulation, but from the fact that the credit institution concerned is failing or is at risk of failing (see, in that regard, judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraph 48).

220 It follows that a resolution action adopted in accordance with Articles 18, 22 and 24 of the SRM Regulation does not constitute a deprivation of the right to property, within the meaning of the second sentence of Article 17(1) of the Charter, which must, inter alia, satisfy the conditions relating to the existence of a public interest and the payment of fair compensation in good time, but provides a basis for regulating the use of property, for the purposes of the third sentence of Article 17(1) of the Charter (see, in that regard, judgment of 5 May 2022, *BPC Lux 2 and Others*, C-83/20, EU:C:2022:346, paragraphs 49 and 50).

221 It is clear from the wording of the latter provision that the use of property may be regulated by law in so far as is necessary for the general interest. Moreover, according to the case-law of the Court, the right to property guaranteed by Article 17 of the Charter is not absolute and its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union (judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB*, C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 69).

222 Under Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect their essence and, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. The second subparagraph of Article 5(4) TEU specifically requires the institutions of the European Union to apply the same principle of proportionality when exercising a power conferred on them.

223 On that point, the Court has acknowledged that, in the exercise of the powers conferred on it, the EU legislature has a broad discretion where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations (judgments of 30 January 2019, *Planta Tabak*, C-220/17, EU:C:2019:76, paragraph 44 and the case-law cited, and of 6 June 2019, *P. M. and Others*, C-264/18, EU:C:2019:472, paragraph 26). In adopting the SRM Regulation, the EU legislature was faced with such choices, while being called on to undertake complex assessments and evaluations.

224 It is in the light of those considerations that the arguments put forward by the appellant in support of the first to third parts and the fifth part of the seventh ground of appeal must be examined, in so far as they are admissible.

225 In support of that ground of appeal, the appellant submits that Articles 15(1)(a) and 22(1) of the SRM Regulation do not comply with the principle of proportionality, on the ground that those provisions do not allow account to be taken of the differences between the situation of a bank

experiencing a liquidity crisis and that of a bank which is insolvent. More specifically, it submits, in essence, that the write-down or conversion of capital instruments does not resolve liquidity problems, that there are less restrictive measures for that purpose and that, in the absence of adequate compensation, such a measure is not proportionate.

226 It must be held that that argument is based on a manifestly incorrect reading of those provisions.

227 As regards the appropriateness of the write-down or conversion of capital instruments, it is clear from the wording of Article 22(1) of that regulation that it provides that the power to write down and convert capital instruments may be exercised only where the resolution tool chosen by the SRB would otherwise result in losses being borne by creditors or their claims being converted. It follows that the General Court committed no error of law in finding, in paragraphs 177 to 181 of the judgment under appeal, that that provision does not apply automatically and in all circumstances, but allows the circumstances of each case to be taken into account.

228 In particular, it follows from the wording of Article 22(1) of that regulation that that regulation provides for a write-down and/or conversion of capital instruments not to resolve the liquidity problems of the entity concerned, but to avoid, where possible, the application of the resolution tool chosen by the SRB resulting in losses being borne by the creditors of that entity or their claims being converted. As the General Court rightly held, in paragraph 156 of the judgment under appeal, without being challenged by the appellant, the write-down and conversion of capital instruments provided for in that provision are an application of the principle, set out in Article 15(1)(a) of that regulation, that the shareholders are to bear first losses.

229 In those circumstances, the argument that the write-down provided for in Article 22(1) of the SRM Regulation is not capable of contributing to the objective of resolving the liquidity problems of a solvent bank cannot succeed.

230 As regards, in that context, paragraphs 169 and 175 to 189 of the judgment under appeal, it is sufficient to point out that, in those paragraphs, the General Court did not examine the proportionality of the resolution tools referred to in Article 22(2) of the SRM Regulation, but that of the exercise of the power to write down and convert capital instruments under Article 22(1) of that regulation. Thus, the complaint that those tools are allegedly unsuitable for resolving the liquidity problems of a solvent bank is ineffective.

231 In so far as the appellant criticises paragraphs 169 and 175 to 189 also on the ground that there are less intrusive alternatives to resolution, it should be recalled that, as regards the criterion of necessity, in accordance with Article 22(1) of the SRM Regulation, read in conjunction with point (b) of the first subparagraph of Article 18(1) of that regulation, the adoption of a resolution scheme and, therefore, the exercise of the power to write down and convert capital instruments presuppose that there is no reasonable prospect that any alternative private sector measures or supervisory action would prevent the failure of the entity within a reasonable timeframe. In so far as that power to write down capital instruments can be exercised only in the absence of alternative measures, the alleged existence of such alternative measures does not call into question the need to write down and convert capital instruments under Article 22(1) of the SRM Regulation.

232 As regards the proportionality of the write-down or conversion of capital instruments measures, it should be recalled, first, that under Article 7(2) of the SRM Regulation, the SRB is responsible for adopting all decisions relating to resolution for financial institutions and cross-border groups which are of particular importance for financial stability in the European Union. In addition, it is

apparent from Article 14(2)(b) of that regulation, which sets out the resolution objectives, that one of the objectives of a resolution action is to avoid significant adverse effects on that financial stability.

233 Secondly, account must be taken of the fact that, as pointed out in paragraph 218 of the present judgment, the conditions for resolution laid down in the first subparagraph of Article 18(1) of the SRM Regulation provide that a resolution scheme should be adopted only in the event of an exceptionally serious liquidity crisis which threatens the very existence of the entity concerned, and to which there is no solution other than resolution or liquidation under normal insolvency proceedings. Thus, the General Court was fully entitled to hold, in paragraphs 171, 185 and 204 of the judgment under appeal, that resolution is an alternative solution to normal insolvency proceedings.

234 Moreover, while the failure or likely failure of a credit institution may, as stated in points (b) and (c) of the first subparagraph of Article 18(4) of the SRM Regulation, be caused both by insolvency and by a liquidity crisis of the credit institution concerned, the resulting failure or likely failure of that institution poses the same risk to financial stability in the European Union.

235 In those circumstances, the General Court was right to rely, by analogy, on the case-law arising from the judgment of 19 July 2016, *Kotnik and Others* (C-526/14, EU:C:2016:570, paragraph 74), in order to hold that, in the case of an entity which is the subject of a resolution action, the application of the principle that the shareholders are to bear first losses, referred to in Article 15(1)(a) of the SRM Regulation, and the exercise of the power to write down and convert capital instruments, provided for in Article 22(1) of that regulation, are the consequence of the fact that the shareholders of an entity must bear the risks inherent in their investments and the economic consequences of the resolution of the entity that is failing or likely to fail.

236 That assessment is not called into question by the appellant's argument that a solvent bank exposed to liquidity problems is unlikely to face losses that will have to be borne by shareholders. Article 22(4) of the SRM Regulation provides that resolution tools are to be applied in order to achieve the objectives, set out in Article 14 of that regulation, in accordance with the principles governing resolution, defined in Article 15 of that regulation, which do not include the objective of covering the losses of the credit institution concerned. Thus, the write-down and/or conversion of capital instruments, provided for in Article 22(1) of the SRM Regulation, which contributes to the achievement of those objectives, is not intended to cover the losses incurred by the entity concerned, and therefore the application thereof does not presuppose the existence of such losses.

237 As regards the compensation provided for in Article 20(16) and Article 76(1)(e) of the SRM Regulation, it has been recalled in paragraph 220 of this judgment that the exercise of the power to write down and convert capital instruments under Article 22(1) of that regulation does not constitute a deprivation of property, and therefore is not subject to fair compensation being paid in good time, as referred to in the second sentence of Article 17(1) of the Charter.

238 That being said, the fact that Articles 20(16) and 76(1)(e) of the SRM Regulation provide that compensation can be paid to shareholders where appropriate may contribute to the proportionality of the write-down and/or conversion of capital instruments provided for by Article 22(1) of that regulation. Furthermore, in the light of the considerations set out in paragraphs 234 to 236 of this judgment, the appellant is wrong to submit that the shareholders of

a solvent bank exposed to liquidity problems should be treated differently from the shareholders of an insolvent bank. Accordingly, the complaints relating to paragraphs 201 et seq. of the judgment under appeal must be rejected.

239 Moreover, the appellant's complaint directed against paragraph 169 of the judgment under appeal is based on a manifestly incorrect reading of that paragraph. The General Court merely pointed out, rightly, that the application of Articles 15 and 22 of the SRM Regulation presupposes that the conditions for the adoption of a resolution action are met, without in any way ruling that the interference with the right to property resulting from the write-down of capital instruments is justified provided that those conditions are met.

240 It follows that the first to third parts and the fifth part of the seventh ground of appeal are unfounded.

241 The seventh ground of appeal is therefore in part inadmissible and in part unfounded.

D. The second ground of appeal, alleging infringement of Articles 14 and 20 of the SRM Regulation, Article 39 of Directive 2014/59, the duty of care and Article 296 TFEU

242 By its second ground of appeal, the appellant submits that, in paragraphs 520 to 569 of the judgment under appeal, the General Court infringed Articles 14 and 20 of the SRM Regulation, Article 39 of Directive 2014/59, the duty of care and Article 296 TFEU in rejecting its argument that the sale procedure in respect of Banco Popular was vitiated by irregularities and did not enable the highest price to be achieved. That ground of appeal is divided into four parts.

1. Arguments of the parties

243 By the first part of the second ground of appeal, the appellant claims that the General Court committed an error of law in holding, in paragraphs 522 and 568 of the judgment under appeal, that the aim of maximising the sale price is not among the resolution objectives set out in Article 14 of the SRM Regulation, whereas, according to the appellant, that objective follows from a combined reading of that Article 14 and of Article 39 of Directive 2014/59. In order to achieve the objective of maximising the price, it is necessary to meet the criteria relating to competition, transparency and non-discrimination set out in Article 39(2) of that directive. However, in the present case, those requirements were not met, since Banco Santander's offer, although submitted out of time, was accepted without the other potential purchasers, in particular Banco Bilbao Vizcaya Argentaria, having been informed that they could submit an offer out of time.

244 By the second part of that ground of appeal, the appellant submits that the General Court infringed competition requirements and the requirement to maximise the sale price, laid down in Article 14 of the SRM Regulation, read in conjunction with Article 39(2) of Directive 2014/59, by holding, in paragraphs 544 to 551 of the judgment under appeal, that the SRB was entitled to invite to participate in the sale procedure only the five potential purchasers who, during the private sale process, had decided not to submit an offer. The failure of that process shows that those potential purchasers were not interested in acquiring Banco Popular, so the public sale procedure launched by the SRB was also very likely to fail.

245 The third part of that ground of appeal alleges infringement of the principles of non-discrimination and competition. According to the appellant, the General Court infringed those principles by holding, in paragraphs 551 and 552 of the judgment under appeal, that the SRB was not required to contact credit institutions established in other Member States. In its view, the fact that such institutions had not expressed an interest in the private sale process cannot justify not contacting them, given the differences between the conditions of the private sale process and those of the sale procedure launched by the SRB, which lay in particular in the fact that it was possible, in the latter, to write down Banco Popular's share capital. Furthermore, the sale of Banco Popular to a Spanish entity increased the risk of collapse of the Spanish economy.

246 By the fourth part of the second ground of appeal, the appellant submits that the General Court disregarded the obligation to maximise the sale price and to avoid any unnecessary destruction of value, by holding, in paragraphs 561 to 566 of the judgment under appeal, that reasons of public interest could justify the acceptance of the offer submitted out of time by Banco Santander.

247 Banco Santander contends that the second ground of appeal is inadmissible, on the ground that the appellant merely repeats or reproduces verbatim the pleas in law and arguments which it submitted to the General Court. For the same reasons, the Commission, the SRB and the Kingdom of Spain contend that the first to third parts of that ground of appeal are in part inadmissible.

248 As to the third part of that ground of appeal, the SRB adds that the argument alleging an increased risk to the Spanish economy was not raised at first instance and is therefore inadmissible. In its view, the fourth part of that ground of appeal is inadmissible, on the ground that the appellant does not state which rule of EU law was allegedly infringed.

249 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander consider that the second ground of appeal is unfounded.

2. Findings of the Court

(a) Admissibility

250 By its second ground of appeal, the appellant disputes, in essence, the considerations on the basis of which the General Court rejected its arguments relating to alleged irregularities in the sale procedure. In so far as the first, second and fourth parts of that ground of appeal contain precise indications regarding the contested paragraphs of the judgment under appeal and the arguments relied on, they cannot, in accordance with the case-law referred to in paragraph 106 of this judgment, be declared inadmissible.

251 Moreover, since all those grounds of appeal allege infringement of Articles 14 and 20 of the SRM Regulation, Article 39 of Directive 2014/59, the duty of care and Article 296 TFEU, the SRB is wrong to contend that the fourth part of that ground of appeal is inadmissible, on the ground that the appellant does not indicate which rule of law was allegedly infringed.

252 However, as regards the third part of the second ground of appeal, it should be recalled that, in paragraphs 551 and 552 of the judgment under appeal, the General Court rejected the argument alleging that institutions from other Member States were discriminated against, on the ground,

inter alia, that it was not apparent from the application initiating proceedings why those institutions would have been interested in the public sale procedure even though they had not expressed an interest in acquiring Banco Popular at the time of the private sale process. Although the appellant now specifies in its appeal why those institutions could have had such an interest, it does not claim that the General Court distorted its application initiating proceedings in that regard. A fortiori, it has not established the existence of such distortion. Accordingly, its argument based on such an interest is inadmissible, in accordance with the case-law referred to in paragraph 109 of this judgment.

253 As to the argument alleging an increased risk to the stability of the Spanish economy, raised in support of the same part of that ground of appeal, the SRB rightly contends that that argument was not raised at first instance and is therefore inadmissible. It is settled case-law that, under the second sentence of Article 170(1) of the Rules of Procedure of the Court of Justice, the subject matter of the proceedings before the General Court may not be changed in the appeal. It is also apparent from settled case-law that to allow a party to put forward for the first time before the Court of Justice a ground for complaint which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the Court of Justice's jurisdiction is thus confined to examining the assessment by the General Court of the pleas and arguments discussed before it (judgment of 18 January 2024, *Jenkinson* v *Council and Others*, C-46/22 P, EU:C:2024:50, paragraph 68 and the case-law cited).

254 The third part of the second ground of appeal must therefore be dismissed as inadmissible.

(b) Substance

255 The second ground of appeal, which refers to paragraphs 520 to 569 of the judgment under appeal, alleges infringement of Articles 14 and 20 of the SRM Regulation, Article 39 of Directive 2014/59, the duty of care and Article 296 TFEU. The appellant submits that, contrary to what the General Court found in those paragraphs, the sale procedure launched by the SRB in respect of Banco Popular was vitiated by irregularities which, in its view, did not enable the resolution objective of maximising the sale price to be achieved.

(1) The first and fourth parts of the second ground of appeal

256 By the first and fourth parts of the second ground of appeal, which must be considered together, the appellant submits that paragraph 522 of the judgment under appeal is vitiated by an error of law in that the General Court held therein that maximising the sale price is not a resolution objective within the meaning of Article 14 of the SRM Regulation. In addition, it submits that, contrary to what the General Court held in paragraphs 561 to 566 and 568 of that judgment, the SRB failed to fulfil the obligation to maximise the sale price and avoid any unnecessary destruction of value, by accepting the offer submitted out of time by Banco Santander.

257 As regards, in the first place, the criticism made in relation to paragraph 522 of the judgment under appeal, it should be recalled that Article 14(1) of the SRM Regulation provides that, when acting under the resolution procedure referred to in Article 18 of that regulation, the SRB and the Commission are to take into account the resolution objectives, and choose the resolution tools and resolution powers which, in their view, best achieve the resolution objectives that are relevant in the circumstances of the case.

258 Under the first subparagraph of Article 14(2) of that regulation, the resolution objectives referred to in Article 14(1) thereof are to ensure the continuity of critical functions, to avoid significant adverse effects on financial stability, to protect public funds by minimising reliance on extraordinary public financial support, to protect depositors covered by Directive 2014/49 and investors covered by Directive 97/9 and to protect client funds and client assets.

259 Consequently, maximising the sale price is not one of the resolution objectives set out in the first subparagraph of Article 14(2) of the SRM Regulation, and this is corroborated by the second subparagraph of that provision. According to the second subparagraph, when pursuing the resolution objectives referred to in the first subparagraph of Article 14(2), the SRB and the Commission are to seek to minimise the cost of resolution and avoid destruction of value, unless necessary to achieve the resolution objectives.

260 As regards point (f) of the first subparagraph of Article 39(2) of Directive 2014/59, which the SRB must take into account when determining the marketing arrangements under Article 24(2)(d) of the SRM Regulation, it should be noted that, by providing that, in the context of the application of the sale of business tool, the proposed sale is to aim at maximising, as far as possible, the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved, Article 39(2) of that directive does not set out a resolution objective, but merely identifies a principle which must specifically govern the application of the sale of business tool.

261 It follows that the General Court was fully entitled to hold, in paragraph 522 of the judgment under appeal, that maximising the sale price does not constitute, as such, a resolution objective within the meaning of Article 14 of the SRM Regulation.

262 As regards, in the second place, the SRB's acceptance of Banco Santander's offer after the expiry of the time limit set in the FROB's letter of 6 June 2017, referred to in paragraph 49 of the present judgment, it should be recalled that, under Article 24(3) of the SRM Regulation, the SRB is to apply the sale of business tool without complying with the marketing requirements when it determines that compliance with those requirements would be likely to undermine one or more of the resolution objectives. It therefore follows from the very wording of that provision that the need to achieve the resolution objectives can justify non-compliance with those marketing requirements, which include a time limit for the submission of bids.

263 In particular, it follows from Article 24(3) of the SRM Regulation, read in conjunction with Article 14(2)(b) thereof, that the SRB may decide not to comply with the marketing requirements where it considers that there is a material threat to financial stability in the Member States arising from or aggravated by the failure or likely failure of the institution under resolution, or that compliance with those requirements would be likely to undermine the effectiveness of the sale of business tool with regard to the activities of the institution concerned in addressing that threat or achieving the objective of avoiding significant adverse effects on that financial stability.

264 The fact that the achievement of those objectives requires non-compliance with the marketing requirements means it cannot be held that compliance with the marketing requirements is necessary in the light of the rule laid down in the second subparagraph of Article 14(2) of the SRM Regulation. As pointed out in paragraph 259 of this judgment, that provision expressly provides that the SRB and the Commission must only seek to minimise the cost of resolution and avoid destruction of value unless necessary to achieve the resolution objectives.

265 Furthermore, it is also apparent from the very wording of point (f) of the first subparagraph of Article 39(2) of Directive 2014/59 that the sale must aim at maximising the sale price only as far as possible, which means that the SRB and the Commission must also take into account the other criteria for carrying out the sale set out in Article 39(2) of that directive and, in particular, the need to effect a rapid resolution action. In any event, the Commission and the SRB must ensure that the proposed measures to maximise the sale price must not run counter to the resolution objectives which are set out in Article 31(2) of that directive in terms identical to those of Article 14(2) of the SRM Regulation.

266 It should be added that, in so far as the SRB and the Commission are called upon to make technical choices and complex forecasts and appraisals when adopting a resolution scheme, they must be allowed a certain margin of discretion. Given that margin of discretion, the judicial review which the Courts of the European Union must carry out of the merits of the grounds of a resolution scheme must not lead it to substitute its own assessment for that of the SRB and the Commission, but seeks to ascertain that that decision is not based on materially incorrect facts and that it is not vitiated by a manifest error of assessment or misuse of powers (see, by analogy, judgment of 4 May 2023, *ECB* v *Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 55 and the case-law cited).

267 In the present case, the General Court considered, in paragraphs 561 to 566 of the judgment under appeal, first, that the timetable for the marketing process set out in the FROB's letter of 6 June 2017, referred to in paragraph 49 of the present judgment, was intended to enable all formalities to be concluded before the markets opened, in order inter alia to avoid a break in Banco Popular's critical functions; secondly, that the FROB accepted Banco Santander's offer when it appeared certain that none of the other institutions invited to participate in the marketing process would be making a bid; and thirdly, that the SRB had noted, in Article 6.6 of the resolution scheme at issue, that, in those circumstances, it was prudent to accept the conditions of the only institution to have made a bid and thus to prevent uncontrolled insolvency of Banco Popular which could, inter alia, have undermined its critical functions. However, in its appeal, the appellant does not claim that those findings of the SRB were vitiated by a manifest error of assessment.

268 In those circumstances, it must be held that the General Court did not err in law in holding, in paragraphs 561 to 566 of that judgment, that the SRB was entitled, in accordance with Article 24(3) of the SRM Regulation, to accept Banco Santander's offer, even though it had been submitted after the expiry of the time limit set in the FROB's letter of 6 June 2017.

269 Furthermore, although the appellant submits, in that context, that the other potential purchasers were not informed of the possibility of submitting a bid out of time, it is sufficient to note that, in paragraph 562 of the judgment under appeal, the General Court found that Banco Santander's bid was only accepted when it appeared certain that none of the other institutions invited to participate in the marketing process would be making a bid. The appellant did not argue that that finding was vitiated by a distortion. Accordingly, the argument concerning the alleged lack of information provided to other potential purchasers must be regarded as ineffective.

270 The first and fourth parts of the second ground of appeal are therefore unfounded.

(2) The second part of the second ground of appeal

271 As is clear from the very wording of point (b) of the first subparagraph, and the second subparagraph, of Article 39(2) of Directive 2014/59 that the marketing criteria referred to in that first subparagraph are not to prevent the resolution authority from soliciting particular potential purchasers, provided that it does not unduly favour or discriminate between potential purchasers.

272 In the present case, the General Court held, in paragraphs 545 and 550 of the judgment under appeal, that the SRB based its decision to invite to participate in the public sale procedure in respect of Banco Popular only the five institutions which had already participated in the private sale process for that institution, on objective criteria relating, first, to the interest already shown by those undertakings in the private sale process, secondly, to the urgency of the situation and the very limited time available for the public sale procedure launched by the SRB and, thirdly, to the need to ensure the confidentiality of the public sale procedure.

273 In its appeal, the appellant disputes, in essence, the validity of the first criterion relating to the interest already shown. It considers that, since the private sale process had not been completed, the public sale procedure launched by the SRB was also very likely to fail.

274 However, in the context of the third part of the second ground of appeal, the appellant itself acknowledges that the different and more favourable conditions of the public sale procedure, in particular the minimum price of one euro required by the SRB and the possibility of writing down the capital, could attract the interest of institutions which had not come forward during the private sale process. In those circumstances, its arguments are not such as to establish that the SRB committed a manifest error of assessment by limiting, in the light of the interest already shown, the number of potential participants in the public sale procedure to the institutions which had already participated in the private sale process.

275 It must be held, therefore, that the second part of the second ground of appeal is unfounded.

276 It follows that the second ground of appeal is in part inadmissible and in part unfounded.

E. The third and eighth grounds of appeal, alleging infringement of the right to property and of the principle of proportionality

277 By its third and eighth grounds of appeal, the appellant submits, in essence, that the resolution scheme at issue infringes the right to property enshrined in Article 17 of the Charter and the principle of proportionality.

1. The third ground of appeal

278 By its third ground of appeal, the appellant submits that the General Court infringed Article 14 of the SRM Regulation, Articles 17 and 47 of the Charter, the duty of care and the rights of the defence, in that it held, in paragraphs 669 to 697 of the judgment under appeal, that the SRB was not required to ascertain or indicate whether alternative measures would have avoided the destruction of value. That ground of appeal is divided into three parts.

(a) Arguments of the parties

279 By the first part of the third ground of appeal, the appellant submits that the General Court infringed Article 14(2) of the SRM Regulation, read in the light of Articles 17 and 52 of the Charter, by asserting, in paragraphs 674 to 678 of the judgment under appeal, that the SRB was not required to indicate whether other solutions would have avoided the destruction of value, or to assess the proportionality of the resolution action in the light of the right to property of the shareholders. According to the appellant, it cannot be found that the shareholders of Banco Popular did not suffer greater losses than the losses they would have incurred under insolvency proceedings, even though the bank was solvent at the time of its resolution.

280 In the second part of that ground of appeal, the appellant submits that the General Court wrongly held that the errors in the 2016 resolution plan were irrelevant for the purposes of assessing the legality of the resolution scheme at issue adopted in 2017. According to the appellant, that reasoning does not take account of the fact that the resolution plan had not been updated since 2016. If that plan had been updated, the SRB could have ordered a separation of assets.

281 By the third part of that ground of appeal, the appellant submits that, in paragraphs 479 to 492 of the judgment under appeal, the General Court infringed its rights of defence by considering, first, that its observations and the expert's report which it had submitted did not substantiate to the requisite legal standard how the alternative solutions proposed would have met the resolution objectives and, second, that its argument that the resolution of Banco Popular had not been prepared properly by the SRB, based on the 2016 resolution plan, was raised out of time, in its reply at first instance. However, it considers that the confidentiality of the resolution scheme at issue had prevented it from submitting such arguments or evidence or from submitting them earlier.

282 Banco Santander contends that the first part of the third ground of appeal is inadmissible, on the ground that the appeal merely reproduces verbatim the arguments already submitted to the General Court. For the same reason, it considers, as does the Commission, that the second part of that ground of appeal is inadmissible, while the SRB contends, in that regard, that the argument relating to the possibility of updating the 2016 resolution plan has been raised for the first time in the appeal. As to the third part of that ground of appeal, the SRB and Banco Santander contend that the appellant does not allege any error of law and does not specify which parts and which paragraphs of the judgment under appeal it is challenging.

283 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander consider that the third ground of appeal is unfounded.

(b) Findings of the Court

(1) Admissibility

284 As regards the first part of the third ground of appeal, it should be noted that, in that part, the appellant submits, in essence, that the resolution scheme at issue disproportionately interfered with its right to property, specifying the paragraphs of the judgment under appeal that are contested and the arguments relied on. In accordance with the case-law referred to in paragraph 106 of this judgment, that first part cannot be declared inadmissible in its entirety.

285 As to the second part of that ground of appeal, the SRB rightly contends that the argument that, if the 2016 resolution plan had been updated, the SRB would have been able to order a separation of assets, is inadmissible in so far as that argument has been raised for the first time in the appeal. It is apparent from paragraph 688 of the judgment under appeal that the appellant had relied before the General Court on errors in the preparation of that resolution plan, whereas it is now challenging the failure subsequently to update that plan. The appellant does not claim that the General Court distorted its application at first instance on that point.

286 As regards the third part of that ground of appeal, it is apparent, in essence, from the appeal that that part alleges that the General Court infringed the appellant's rights of defence and that it refers to paragraphs 479 to 492 of the judgment under appeal, both as regards the alleged lateness of those arguments raising the inadequate preparation of the resolution, and as regards the taking into account of the various expert's reports submitted by the appellant. It follows that, in that part, the appellant specifies the paragraphs of the judgment under appeal that are contested and the arguments in support of its complaints.

287 It must be held, therefore, that the first and third parts of the third ground of appeal are admissible. The second part of that ground of appeal must be declared inadmissible.

(2) Substance

288 The first part of the third ground of appeal alleges infringement of Article 14(2) of the SRM Regulation, read in the light of Articles 17 and 52 of the Charter. The appellant submits that the General Court wrongly found, in paragraphs 674 to 678 of the judgment under appeal, that the SRB was not required to ascertain whether the resolution action complied with the principle of proportionality in the light of the shareholders' right to property and, in particular, whether other solutions would have avoided the destruction of value.

289 It must be held that this argument is based on a manifestly incorrect reading of the judgment under appeal.

290 First, in arguing that the General Court held that the SRB was not required to ascertain that the resolution action complied with the principle of proportionality in the light of the shareholders' right to property, the appellant relies on an isolated, and therefore incorrect, reading of paragraph 674 of the judgment under appeal. In paragraph 673 of that judgment, the General Court pointed out that the destruction of value, within the meaning of the second subparagraph of Article 14(2) of the SRM Regulation, concerns not only the financial interests of the entity's shareholders and holders of capital instruments, but also those of its depositors, its employees and its other creditors.

291 From that perspective, the General Court intended to emphasise, in essence, in paragraph 674, that the proportionality of the resolution action must be assessed not only in the light of the shareholders' interests, but also in the light of other interests. This is corroborated by the subsequent analysis of the General Court. Thus, in paragraph 675 of the judgment under appeal, the General Court noted that the SRB had found, in Article 5.2 of the resolution scheme at issue, that the sale of business tool was an appropriate, necessary and proportionate means of meeting the resolution objectives. In particular, in paragraph 678 of that judgment, the General Court emphasised that, according to the assessment contained in Article 4.6 of that scheme, the disadvantages and costs associated with the adoption of the resolution action, mainly the losses suffered by the shareholders and subordinated creditors, would be outweighed by the benefits

derived from it, namely the maintenance of Banco Popular's critical functions, the minimisation of adverse effects for the economy and financial stability and the avoidance of losses that could be suffered by other creditors.

292 In so far as the appellant submits that the General Court wrongly held that the shareholders of Banco Popular did not suffer greater losses following the bank's resolution than the losses they would have incurred under insolvency proceedings, it is sufficient to point out that, in paragraph 678 of the judgment under appeal, the General Court merely summarised the content of Article 4.5 and 4.6 of the resolution scheme at issue, for the purpose of responding, as is apparent from the subsequent paragraph of the judgment under appeal, to the appellant's argument that the SRB did not take into account, in that scheme, the destruction of value that the sale of business tool was, in its view, likely to entail for the shareholders of Banco Popular.

293 Secondly, contrary to what the appellant submits, the General Court did not find that the SRB could refrain from ascertaining whether other solutions would have avoided the destruction of value. On the contrary, the General Court found, in paragraphs 675 to 677 of the judgment under appeal, that the SRB had considered, in Article 5.3 of the resolution scheme at issue, that the other resolution tools provided for in the SRM Regulation were not appropriate and would not meet the resolution objectives to the same extent as the sale of business tool, and that, accordingly, the SRB had justified that the sale of business tool was necessary for the attainment of those objectives.

294 In that context, the finding in paragraph 677 does not call into question the fact that the principle of proportionality requires that, where there is a choice between several appropriate measures, recourse must be had to the least onerous (see, as regards that requirement, judgment of 9 November 2023, *Altice Group Lux* v *Commission*, C-746/21 P, EU:C:2023:836, paragraph 69 and the case-law cited). Indeed, it was only in so far as the SRB justified that the sale of business tool was necessary for the attainment of the resolution objectives that the General Court held that the SRB was not required to indicate whether other solutions would have avoided the destruction of value.

295 It follows that the first part of the third ground of appeal is unfounded.

296 By the third part of the third ground of appeal, the appellant alleges infringement of its rights of defence by the General Court, in paragraphs 479 to 492 of the judgment under appeal. It submits, in essence, that the confidentiality of the resolution scheme at issue prevented it from further substantiating its line of argument regarding the existence of alternatives to resolution and from submitting, before lodging its reply at first instance, that, in the light of the alleged deficiencies in the 2016 resolution plan, the SRB could have prepared the resolution better.

297 First, it is apparent from paragraphs 345 to 353 of the judgment under appeal that the appellant had not established that the versions of the resolution scheme at issue and of valuations 1 and 2 which were published on the SRB's website, and to which the appellant had had access, were insufficiently reasoned. Secondly, in paragraph 400 of the judgment under appeal, the General Court found that the appellant had not explained to what extent the economic data which remained redacted in the non-confidential versions of the resolution scheme at issue and valuation 2 were necessary in order to understand that scheme and for it to exercise its right to an effective judicial remedy.

298 Furthermore, it has been held in paragraphs 131 to 134 of this judgment that the General Court did not infringe Article 296 TFEU or Article 47 of the Charter by deciding, in the order of 9 June 2021, referred to in paragraph 723 of the judgment under appeal, that the full text of the resolution scheme at issue was not relevant to the resolution of the action.

299 In those circumstances, it must be held that the appellant has not established to the requisite legal standard that, as regards the existence of alternative solutions and the preparation of the resolution of Banco Popular by means of the 2016 resolution plan, the confidentiality of the resolution scheme at issue prevented it from defending its rights effectively before the EU judicature.

300 The third part of the third ground of appeal is therefore unfounded.

301 It follows that the third ground of appeal is in part inadmissible and in part unfounded.

2. The eighth ground of appeal

302 By its eighth ground of appeal, the appellant submits that the General Court infringed Articles 17 and 52 of the Charter and Article 5(4) TEU by holding, in paragraphs 463 to 492 of the judgment under appeal, that the resolution scheme at issue did not infringe the right to property. That ground of appeal is divided into three parts.

(a) Arguments of the parties

303 By the first part of the eighth ground of appeal, the appellant submits that, in paragraphs 467 to 469 of the judgment under appeal, the General Court wrongly found that the resolution scheme at issue had not led to a disproportionate interference with the right to property of the shareholders of Banco Popular, on the ground that insolvency proceedings were the only alternative to resolution. In that context, it claims that the General Court was also wrong to rely on its own case-law arising, inter alia, from the judgment of 13 July 2018, *K. Chrysostomides & Co. and Others* v *Council and Others* (T-680/13, EU:T:2018:486), according to which shareholders are to be the first to bear losses which could lead to a capital shortfall. However, referring to its argument set out in the context of the seventh ground of appeal and summarised in paragraph 195 of the present judgment, the appellant considers that that case-law is inapplicable to banks which, like Banco Popular, are solvent at the time of the resolution. Moreover, contrary to what is stated in the judgment under appeal, the SRM Regulation does not presume insolvency.

304 By the second part of that ground of appeal, the appellant submits that the General Court erred in law when it found, in paragraphs 466, 467 and 481 of the judgment under appeal, that the resolution scheme at issue met the requirements of Article 52(1) of the Charter. More specifically, it claims that the General Court merely asserted that the conditions set out in point (c) of the first subparagraph of Article 18(4) of the SRM Regulation had been met, without, however, establishing whether the SRB had exercised its power to write down capital instruments under the conditions laid down by law and in a non-arbitrary manner and, in particular, without examining whether the exercise of that power was based on the valuation of the bank's assets and liabilities, as required by Article 20(5)(c) and Article 21(8) of the SRM Regulation.

305 According to the appellant, Article 6.3 and 6.4 of the resolution scheme at issue is wrongly based on valuation 2. The valuation report expressly stated that it did not have the purpose of informing the determination whether the conditions for the adoption of a resolution action or the write-down of capital instruments had been met, and therefore stated that it could not be used for the purposes of exercising the power to write down capital instruments. Thus, it was arbitrary to disregard that and use valuation 2 as a basis for the write-down of Banco Popular's share capital. Furthermore, valuation 2 was contradictory and arbitrary in so far as it estimated the value of Banco Popular at minus EUR 8.2 billion, even though Banco Popular was solvent.

306 By the third part of the eighth ground of appeal, the appellant claims that the General Court infringed Articles 17 and 52 of the Charter and Article 5(4) TEU by finding, in paragraphs 474 to 476 of the judgment under appeal, that the write-down of instruments of ownership was carried out in accordance with the principle of proportionality. However, the interference with its right to property cannot be regarded as proportionate in the absence of adequate compensation that takes account of the fact that Banco Popular was solvent at the time of the resolution.

307 The SRB contends that the first part of the eighth ground of appeal is inadmissible on the ground that, in its view, the appellant has not shown that the General Court erred in law as regards the alleged infringement of the right to property. The SRB and Banco Santander contend that the second part of that ground of appeal is inadmissible on the ground that it introduces new facts and arguments at the appeal stage and does not refer to any specific ground of the judgment under appeal. For the same reasons, the SRB contends that the third part of that ground of appeal is inadmissible.

308 In any event, the Commission, the SRB, the Kingdom of Spain and Banco Santander consider that the eighth ground of appeal is unfounded.

(b) Findings of the Court

309 As regards the admissibility of the eighth ground of appeal, and more particularly the first part thereof, the appellant criticises the General Court, inter alia, for finding that the SRM Regulation presumes insolvency. However, as the Advocate General noted in point 115 of her Opinion, the appeal does not specify the part of the judgment under appeal in which the General Court made such a finding and therefore fails to comply with the requirements of Article 169(2) of the Rules of Procedure of the Court of Justice. It follows that the first part of that ground of appeal is in part inadmissible.

310 Moreover, the second and third parts of that ground of appeal are based, as the Advocate General rightly noted in point 117 of her Opinion, on arguments raised for the first time at the appeal stage, in so far as the appellant now relies on alleged irregularities vitiating the valuation and the lack of adequate compensation. Those two parts must therefore be rejected.

311 As to the merits of the first part of the eighth ground of appeal, it should be noted that the appellant criticises paragraphs 467 to 469 of the judgment under appeal and relies, in that regard, in essence, on the same arguments which it put forward in the context of its seventh ground of appeal and which are summarised in paragraph 195 of this judgment. Consequently, for the same reasons as those set out, in particular, in paragraphs 233 to 235 of this judgment, it must be held that that line of argument is unfounded.

312 It follows that the eighth ground of appeal is in part inadmissible and in part unfounded.

313 In the light of all the foregoing considerations, the appeal must be dismissed.

VI. Costs

314 In accordance with Article 184(2) of the Rules of Procedure, where an appeal is unfounded, the Court is to make a decision as to costs.

315 Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

316 In the present case, since the appellant has been unsuccessful, it must, having regard to the forms of order sought by the Commission, the SRB and Banco Santander, be ordered to bear its own costs and to pay those incurred by the Commission, the SRB and Banco Santander.

317 Under Article 140(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, Member States and institutions which have intervened in the proceedings are to bear their own costs.

318 Consequently, the Kingdom of Spain, the Parliament and the Council must bear their own costs.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Aeris Invest Sàrl to bear its own costs and to pay those incurred by the European Commission, by the Single Resolution Board (SRB) and by Banco Santander SA;**

3. **Orders the Kingdom of Spain, the European Parliament and the Council of the European Union to bear their own costs.**

[Signatures]