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# Spain: Banco Popular Restructuring, 2017<sup>1</sup>

Carey K. Mott<sup>2</sup>

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## Abstract

On Friday, June 2, and Monday, June 5, 2017, Banco Popular Español, S.A., experienced a depositor run. Emergency liquidity assistance from Spain's central bank proved insufficient to meet the bank's liquidity needs. On June 6, Popular informed the European Central Bank that it was likely to fail, triggering the European Union's Single Resolution Mechanism. That evening, the Single Resolution Board (SRB) initiated a sale of Popular's business to one of Spain's largest banks, Santander Group S.A., provided that Santander raise or inject enough capital to meet regulatory requirements and provide liquidity to manage further outflows. The sale involved the write-down or conversion of capital instruments and resulted in EUR 4.2 billion (USD 4.5 billion) in losses for investors in Popular's common shares, convertible contingent (CoCo) bonds' being treated as additional Tier 1 (AT1) capital, and subordinated debt's being treated as Tier 2 capital. Senior debt holders and depositors were protected. Spain's Fund for Orderly Bank Restructuring executed the transfer to Santander, and the bank opened for business the following morning. Santander raised EUR 7 billion in new equity from private investors in July 2017. The SRB determined Popular's resolution was in the public interest given its significant lending to small and medium-sized enterprises, payments functions, and market share in Spain and Portugal. The resolution of Popular was the first that SRB executed under the Single Resolution Mechanism and the first-time authorities wrote down CoCos. European courts ultimately dismissed litigation filed by creditors. Policymakers and the press generally considered the privately funded resolution a success, given the SRB's rapid execution without resorting to official support, Popular's uninterrupted operations, and the lack of contagion.

**Keywords:** Banco Popular, European Central Bank, resolution, sale of business, Single Resolution Board, Spain

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<sup>1</sup> This case study is part of a Yale Program on Financial Stability (YPFS) selection of New Bagehot Project modules considering bank resolutions and restructurings. A survey of all the cases in this series (McNamara et al. 2024) and the cases underlying it are available from the *Journal of Financial Crises* at <https://elischolar.library.yale.edu/journal-of-financial-crises/vol6/iss1>.

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## Overview

This module describes the resolution of Banco Popular Español, S.A. (Popular), the first resolution completed by the Single Resolution Board (SRB), which resulted in the sale of the business to Santander Group S.A. (Santander).

Popular faced acute liquidity stress in October 2016 amid steady outflows from all customer segments (SRB 2017a). By early 2017, Popular became severely distressed when a decade of operating under an aggressive investment policy, write-offs of nonperforming real estate loans, and a weak capital position led to reported losses of EUR 3.5 billion (USD 3.8 billion)<sup>3</sup> (Kozłowska 2018).

That April, the firm's CEO resigned amid a restatement of its 2016 financial reports, and the following month, Popular's management enlisted Deutsche Bank to help market the firm, with a target date to collect binding offers by June 10, 2017;<sup>4</sup> no bidders emerged (Mount and Arnold 2017; Reuters 2017; SRB 2017a). Popular's deterioration quickened in early June 2017 (see Figure 1); it was said to have lost EUR 18 billion in deposits in its final 10 days (García-Abadillo 2017).

The bank opened on Friday, June 2, to news that Deloitte Réviseurs d'Entreprises (Deloitte), an auditor, had assessed the economic value of the firm at between negative EUR 1.3 billion in the best-case scenario and negative EUR 8.2 billion in the worst-case scenario (Deloitte 2017). That

## Key Terms

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**Purpose:** To safeguard depositors and senior creditors; maintain the critical functions of Popular, including SME lending, without official capital support; and ensure the financial stability of Spain and Portugal

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**Size and Nature of Institution** Fifth-largest Spanish bank, with about EUR 126 billion in assets as of June 6, 2017

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**Source of Failure** Bank run, which was rooted in under-provisioning of nonperforming real estate assets

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**Start Date** On June 6, 2017, the ECB activated the SRM by declaring Popular "failing or likely to fail" (SRB 2017a)

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**End Date** June 7, 2017

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**Approach to Resolution and Restructuring** Write-down or conversion of capital instruments, including common shares and junior bondholders (AT1 and Tier 2 capital) totaling EUR 4.2 billion, and sale of business

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**Outcomes** Santander purchased all outstanding shares of Popular for EUR 1 and took on assets and liabilities valued at negative EUR 6.88 billion; the SRB and ECB incurred no losses as a result of the resolution

*(continued)*

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<sup>3</sup> Per Yahoo Finance, EUR 1= USD 1.07 as of March 31, 2017.

<sup>4</sup> This was later pushed to the end of June (SRB 2017a).

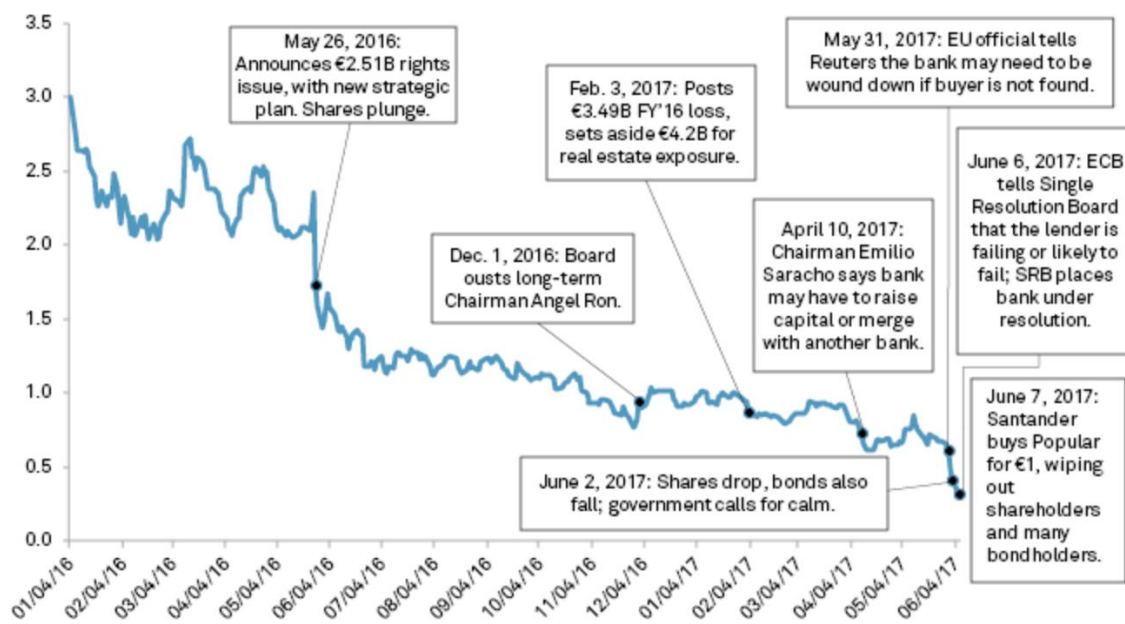
day, Popular experienced significant depositor withdrawals.<sup>5</sup>

The run on Popular continued on Monday, June 5. The bank requested EUR 1.6 billion in emergency liquidity assistance (ELA) from the Banco de España, Spain's central bank, which was granted three hours later at a penalty rate of 12%. Tuesday, June 6, saw more depositor withdrawals and another ELA request, for EUR 7.6 billion. European Central Bank (ECB) approval was required for ELA exceeding EUR 2 billion; the ECB approved this request, but Banco de España rejected the amount and instead approved a further EUR 1.6 billion–EUR 1.9 billion tranche (Buck, Arnold, and Sanderson 2017; Gore 2019; SRB 2017a).

#### Notable Features

The first resolution performed by the Single Resolution Board; the final sale of business was executed in roughly 14 hours; Santander compensated former Popular retail shareholders with a post-sale "loyalty bond"; Santander created a new vehicle to hold and ultimately divest some of Popular's nonperforming real estate assets; CoCo bonds were written down to zero for the first time

**Figure 1: Banco Popular's Share Price (EUR)**



Source: Laidlaw 2018.

<sup>5</sup> The firm also sold its 49% stake in Targobank back to its co-investor, Banque Fédérative du Credit Mutuel, a French firm with which Popular had allied itself in 2010 and which became a major shareholder in Popular (Laidlaw 2017; Santos 2017). Also, in 2013 and 2015, Popular had issued EUR 500 million and EUR 750 million in contingent convertible (CoCo) bonds as part of its AT1 policy, which were ultimately written down in its resolution (Santos 2017a; Wu 2018).

By 3:30 pm on June 6, Popular informed the ECB that it had run out of liquidity and was likely to fail. By 9:30 pm, the Governing Council of the ECB determined Popular was “failing or likely to fail,” a designation known as the “FOLTF assessment,” a trigger for resolution under the Single Resolution Mechanism (SRM) (Mesnard, Margerit, and Magnus 2017; SRB 2017a). The ECB informed the SRB of the assessment, and the SRB assessed there were no private or supervisory alternatives. The SRB ordered the Fund for Orderly Bank Restructuring (Fondo de Reestructuración Ordenada Bancaria, or FROB) to market the firm to potential bidders (Duarte and Baigorri 2017; Kozińska 2018). The SRB asked Santander and BBVA to submit binding offers for Popular; only Santander bid, on the sole condition that shareholders (common equity Tier 1, or CET1, holders) and additional Tier 1 (AT1) capital holders—including contingent convertible (CoCo) bonds—were written down to zero while Popular’s Tier 2 capital instruments were converted to equity and then purchased by Santander for a token value of EUR 1 (Santos 2017b; SRB 2017g). The SRB accepted the bid but required that Santander commit to raise EUR 7 billion in capital so that the acquisition of Popular would not lead Santander to breach its own regulatory capital requirements and endanger its banking authorization.

The SRB deviated from Popular’s preexisting resolution plan, finalized in 2016. Under the plan, Popular would have stayed in business as a going concern through a bail-in of equity and eligible liabilities and a sale of the firm’s interests in a half dozen joint ventures and subsidiaries (SRB 2016). Instead, when the bank was failing in 2017, the SRB decided to use the sale-of-business tool combined with the write-down or conversion of capital instruments (WDCC). The SRB chose not to use the bail-in tool, which would have allowed authorities to impose losses on a broader range of liability holders but would have taken longer and not solved the bank’s immediate liquidity problems (SRB 2017a).

Under the WDCC regime, the authorities wrote down or converted Popular’s capital instruments (common equity, AT1, and Tier 2) and then sold all equity in the parent company to new owners. Common equity, AT1, and Tier 2 investors lost the entire value of their investments, about EUR 4.2 billion; depositors and senior creditors were protected.

In May 2022, Europe’s top court ruled that shareholders that participated in Popular’s 2016 plan were not entitled to any compensation as the institution was resolved. The court ruled that shareholders and creditors ought to bear losses as a matter of priority. Some shareholders had sued the SRB with the argument that Popular was not on the verge of collapse (Reuters 2022).

The SRB, FROB, and ECB generated no profit or loss from Popular’s resolution, other than a single, symbolic euro from the sale of Popular and some administrative costs borne by the SRB. The entire execution of the resolution of Popular occurred between 3:30 pm on Tuesday, June 6, and market open on Wednesday, June 7 (see Figure 2).

**Figure 2: Timeline of Banco Popular’s Resolution**

Date	Event
May 2, 2017	The ECB organizes a crisis management meeting with the European Commission, SRB, and others about Popular following significant withdrawals by large corporate clients and local authorities and a continued share price decline.
May 24, 2017	The SRB commissions Deloitte to perform a provisional valuation of Popular following months of negative news about the bank’s capital adequacy, owing to significant under-provisioning of its real estate portfolio dating back several years.
June 2, 2017	The SRB receives Deloitte’s provisional valuation, which places the value of Popular at between negative EUR 8.2 billion and negative EUR 1.3 billion. The SRB plans to market Popular for a potential sale-of-business resolution. The SRB orders the FROB to market the firm to potential sellers, which it does with the assistance of Lazard, Jefferies-Arcano, and JPMorgan. Depositors begin withdrawing funds.
June 5, 2017	The bank run continues. Popular taps ELA, which is sufficient to meet depositor withdrawals.
June 6, 2017	The run on Popular continues, and a second, larger request for ELA is rejected. That afternoon, Popular informs the ECB that it is likely to fail. The FROB, operating under the SRB’s orders, amends the sale letter to request bids from Santander Group S.A. and BBVA by that evening. The ECB makes the “failing or likely to fail” assessment at night and informs the SRB to initiate the resolution process. Santander makes an offer that requires the write-down of capital instruments. The SRB requests a second valuation from Deloitte.
June 7, 2017	In the early morning hours, the SRB convenes an executive session with the FROB and Banco de Portugal to adopt the resolution plan. The EC approves the SRB’s resolution plan within an hour and a half.  Santander purchases all shares of Popular for EUR 1 that morning. Popular opens for business the morning of June 7 as a subsidiary of Santander.
July 26, 2017	Santander raises an additional EUR 7 billion in capital as a condition of its purchase of Popular.
March 17, 2020	Europe’s second-highest court dismisses lawsuits brought by Popular’s creditors against the SRB between 2018 and 2019. The court determines that no compensation is owed to Popular’s shareholders and creditors, informed by Deloitte’s third valuation of Popular.
June 1, 2022	Europe’s highest court dismisses lawsuits brought by Popular’s creditors that argued the SRB’s resolution of Popular was unlawful. The court confirms that no compensation is owed to Popular’s shareholders and creditors.

*Source: Author’s analysis.*

In 2019, major creditors sued the SRB for compensation, disputing Deloitte’s provisional valuation (CJEU 2022b; Reuters 2019). On June 1, 2022, the European General Court, the European Union’s (EU’s) highest court, dismissed these cases. Based on Deloitte’s third and final valuation, the court determined that creditors were not worse off as a result of the resolution and that no compensation was owed to them (CJEU 2022b).

Santander was one of the largest banks in Spain and also fell under the purview of the FROB (as Spanish executive resolution authority); it was supervised by Banco de España in Spain (which is also the planning resolution authority) and the ECB at the EU level. With the acquisition of Popular, Santander became the largest private bank in Spain (claiming 18.8%

of customer funds in Spain) and the largest private bank in Portugal in terms of assets and lending (Santander 2018). At the time of its purchase of Popular, Santander claimed 12.3% of the Spanish small and medium-sized enterprise (SME) lending market; following its purchase, this increased to an estimated 19.5% (Santander 2017b).<sup>6</sup>

### **Summary Evaluation**

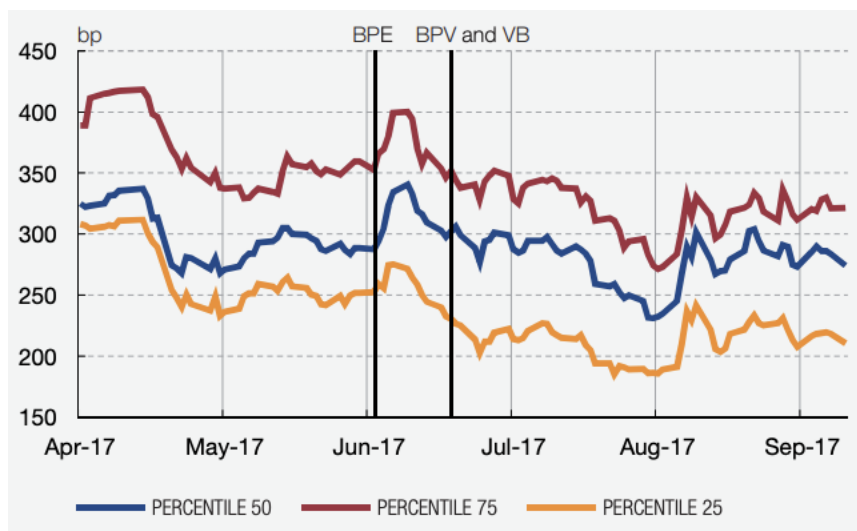
Popular was the SRB's first resolution. The resolution by sale of business met the goals of the European Union's Bank Recovery and Resolution Directive (BRRD). Namely, shareholders and investors in convertible capital instruments bore the losses, Popular continued operating without interruption, no public funds were used to rescue it, and there was very little contagion. Moreover, the European Union's highest court ultimately approved the treatment of shareholders and creditors. For these reasons, policymakers and the press generally viewed the SRB's resolution of Popular as a success.

Policymakers and markets were particularly anxious that the first SRB-imposed losses on AT1 and Tier 2 investors could precipitate volatility in trading for similar instruments across Europe. In the event, Banco de España found no signs of stress. Interest rate spreads for other banks' instruments briefly rose only around the resolution date (see Figure 3) (Banco de España 2017). In the week following the resolution, the subordinated debt of small Spanish lenders experienced sudden drop in bond prices, with some bond traders describing a local crisis of confidence in Tier 2 debt (Smith 2017). By the end of the year, the CoCo bond market was largely unaffected at a size of USD 2 trillion (Smith 2018).

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<sup>6</sup> Considering the EUR 7 billion recapitalization required to absorb the insolvent Popular, Santander anticipated a return on its investment of up to 14% by 2020 (Monzón 2017; Santander 2017b).



**Figure 3: Interest Rate Premium of Alternative Tier 1 Securities over Tier 2 Securities**

Note: BPE refers to the SRB’s resolution of Banco Popular Español on June 7, 2017. BPV and VB refer to Banca Popolare di Vicenza and Veneto Banca, respectively, two Italian lenders that received a “failing or likely to fail” (FOLTF) assessment from the ECB in June 2017 but were resolved under Italian bankruptcy law rather than the SRB. The chart presents the 25th, 50th, and 75th percentiles of the interest rate premium of an issuer’s AT1 securities over its Tier 2 securities owing to the greater risk of loss from the former types of securities. For example, the 75th percentile on a specific date signals that an issuer’s AT1–Tier 2 premium is larger than 75% of the sample on that date.

Source: Banco de España 2017.

The SRB wrote down common equity Tier 1 shares and converted or wrote down junior bonds (AT1 and Tier 2), following BRRD procedures. Common shareholders lost EUR 2.1 billion, based on the market value of Popular’s equity on December 31, 2016. The write-down of the junior bonds amounted to EUR 2.0 billion. The write-downs did not affect senior debt, and the taxpayers did not incur losses. The BRRD envisions quick resolutions, typically over a weekend; the SRB completed Popular’s resolution between 3:30 pm on Tuesday and 7:00 am on Wednesday. Deloitte later delivered a final valuation that largely confirmed its provisional valuation.

Bondholders had concerns of conflicts of interest, with Deloitte producing multiple valuation reports on Popular for the SRB. Deloitte produced a sale-of-business report for the SRB in shorter than usual time and with lack of access to critical information. Deloitte also produced the “no creditor worse off” (NCWO) report, which the bondholders alleged indicated a lack of independence (Laidlaw 2018). The SRB later confirmed that it had conducted the first valuation for Popular itself in mid-2017. The SRB also clarified that there was no conflict of interest in the choice of the same agent for the two valuation exercises (Tanner 2018).

Academics and commentators in the press deemed the collaboration between the SRB and Spain’s regulatory bodies a success, in contrast to the drawn-out resolutions of several Italian banks between 2015 and 2017 (Binder 2017; Brunsden 2017; Donnelly and Pometto 2024).

However, affected shareholders and creditors took issue with the SRB's determination that the resolution left no creditor worse off than in liquidation (NCWOL); under the BRRD, the SRB would owe some compensation to creditors if its Board, informed by an independent ex post valuation, later determined that it had failed to meet this NCWOL standard. Between 2018 and 2022, Popular investors, ranging from major international creditors to retail shareholders, objected to the SRB's NCWOL determination and sought full or partial compensation of the convertible capital instruments. They alleged that the SRB (1) based the resolution on a flawed valuation, (2) was insufficiently transparent, (3) lacked accountability, and (4) could have avoided resolution altogether, had central banks provided Popular more liquidity (see Appendix A). Such complaints are common in bank resolutions featuring the write-downs of capital instruments. This case was unusual because of the magnitude of losses to shareholders and bondholders and the wide publicity it received. The European Court of Justice dismissed all of the claims in 2022; nevertheless, they are valuable context for authorities considering resolving a large bank.

The court's opinion on the first instance of an SRB-facilitated resolution established a precedent for future SRB resolutions (CJEU 2022b; EGC 2022). Most importantly, the court affirmed the delegation of power from the European Commission and European Council to the SRB. It ruled that, as an administrative body, the SRB was entirely responsible for the provisional valuation of Popular and the design of the resolution scheme. The court also noted its limited ability to evaluate the SRB's highly technical decisions. That said, the court found no error in the SRB's assessment that Popular met the conditions for resolution, as outlined in the BRRD. The court established that the uncertainty Deloitte expressed about the accuracy of Popular's valuation was to be expected in a provisional valuation, as the BRRD anticipated (CJEU 2022b).

In its opinion, the court stated that the write-down of AT1 and Tier 2 instruments did not constitute "an excessive and intolerable interference" with the creditors' right to property; rather, it was "a justified and proportionate restriction" on this right. The court also stated that a creditor's "right to be heard" (under the NCWOL principle) was subject to limitations when the timing or substance of such a hearing would interfere with financial stability (CJEU 2022b).

Despite the general success of the Popular resolution, it led the ECB to propose clarifications in the BRRD framework (ECB 2018). In June 2019, the European Parliament implemented an updated BRRD II that clarified the roles of cross-border resolution colleges, the timing of the FOLTF assessment, and the provision of emergency liquidity to banks under resolution (European Parliament 2019).

<b>Context: Spain, Banco Popular, 2015–2017</b>	
<b>Assets</b>	<b>EUR 137.5 billion</b> as of Dec. 31, 2016 <b>EUR 126.4 billion</b> as of June 6, 2017
<b>Liabilities</b>	<b>EUR 127.4 billion</b> as of Dec. 31, 2016 <b>EUR 117.0 billion</b> as of June 6, 2017
<b>Deposits</b>	<b>EUR 76.6 billion</b> as of Dec. 31, 2016 37% insured <b>EUR 68.3 billion</b> as of March 31, 2017 31% insured
<b>Capital Ratio (CET1)</b>	<b>12.13%</b> as of Dec. 31, 2016 <b>10.87%</b> as of March 31, 2017
<b>Nonperforming Loans</b>	<b>EUR 18.3 billion</b> as of Dec. 31, 2015 <b>EUR 19.6 billion</b> as of Dec. 31, 2016
<b>Market Share</b>	<b>16.5%</b> of SME lending market as of Dec. 31, 2015 <b>17.7%</b> of SME lending market as of Dec. 31, 2016
<b>Banking System, % of GDP</b>	<b>139.1%</b> as of Dec. 31, 2016 <b>129.1%</b> as of March 31, 2017
<i>Sources: Bloomberg; Capital IQ; Deloitte 2017; Deloitte 2018a; Popular 2017; SRB 2017a; SRB 2017b.</i>	

## Key Design Decisions

- 1. Purpose: The SRB resolved Popular using a sale-of-business tool to ensure financial stability in Spain and Portugal, citing Popular's lending to small and medium-sized enterprises and its role in the payments system.**

### Motivations for the Decision

On June 6, 2017, the SRB decided to resolve Popular to protect its depositors; to continue the critical operations of its retail and commercial banking business (particularly, its lending to SMEs) and its payments and cash services (5%–10% of Spain's market); and to ensure financial stability in Spain (where it was headquartered and held 92% of its assets) and Portugal (where it operated a relatively small branch with an outsize share of the local SME lending market; see Figure 10) (SRB 2016; SRB 2017f; SRB 2017a).

The SRB also expressed concern that liquidating Popular could promote contagion to other major Spanish banks with similar businesses (SRB 2017a). The bank's SME lending, which comprised 29% of its overall exposure, was significantly higher than the 10% average at other Spanish banks (Mesnard, Margerit, and Magnus 2017). In Spain, Popular accounted for EUR 35 billion in financing to SMEs, or 17% of a market in which one in four SMEs were a customer of Popular (SRB 2016).

The SRB determined that Popular met the necessary preconditions for resolution; namely, (a) that it was experiencing significant difficulties, but (b) private sector measures were not available within a reasonable time frame, and (c) a resolution was in the public interest (European Parliament 2014a; FROB 2017c). The SRB determined that a sale of business was necessary due to the severe liquidity strains that impaired the firm's ability to meet its obligations as they fell due (SRB 2017f). The SRB considered liquidating Popular but determined this method would not guarantee depositor protection or financial stability (SRB 2017g). The SRB chose not to use the bail-in tool, which would have allowed authorities to impose losses on a broader range of liability holders but would have taken longer and not solved the bank's immediate liquidity problems (SRB 2017a).

### Source of the Institution's Failure

Based on its reported financials, Popular's Tier 1 capital was 5.7% of total assets and 12.2% of total risk-weighted assets, or RWAs, at the end of 2016 (Capital IQ). This was below the average 12.6% of Spanish banks under ECB supervision but well above the trigger levels of 7% and 5.125% on its two outstanding AT1 instruments (McCutcheon 2017; Mesnard, Margerit, and Magnus 2017). Popular also passed the stress test that the European Banking Authority (EBA) administered in 2016; however, it was one of the worst performers of 51 banks in the test (Binham 2017; EBA 2016; Noonan and Arnold 2016).

In the first half of 2017, Popular reported under-provisioning of bad real estate loans and warned of capital shortfalls (Mesnard, Margerit, and Magnus 2017; SRB 2017a). In April,

Moody's Investors Service downgraded Popular's debt, citing the negative news about Popular's fundamentals (Moody's 2017; SRB 2017a). The decline in share price risked triggering its convertible AT1 bonds (Laidlaw 2018). On Thursday, June 1, 2017, Popular's AT1 bonds began to trade at distressed levels following a concerning report by Reuters (Mesnard, Margerit, and Magnus 2017). On Friday, June 2, Deloitte reported to the SRB that Banco Popular had a negative net worth of approximately EUR 1.3 billion–EUR 8.2 billion based on different scenarios (FROB 2017c). On the same day, Bloomberg news reported that Popular was meeting with the ECB to gain additional liquidity while faced with deposit withdrawals amidst the search for a potential buyer; the meeting was neither confirmed nor denied by Popular's spokesman the same day. Popular had lost almost 38% of its market capitalization that week (Duarte and Baigorri 2017). Popular struggled to meet withdrawals, despite emergency liquidity assistance from Spain's central bank (ECB 2017; SRB 2017g). On Monday, June 5, Bloomberg reported that it was unclear if the ECB provided additional liquidity to Popular. Popular's equity price continued to decline to a three-decade low that week, while the bank's senior bonds indicated signs of elevated stress. By Tuesday, June 6, Popular's market capitalization had reduced to EUR 1.3 billion (Duarte 2017).

### **Process for Determining the Valuation**

The SRB commissioned Deloitte to conduct three valuations of Popular, also in line with the BRRD. The first valuation put Popular's assets at EUR 144.7 billion; the third valuation revised this downward to EUR 126 billion (Deloitte 2018a; SRB 2017b). The second valuation also presented the range of recoveries for all creditors in insolvency at EUR 116 billion–EUR 121 billion and for implied losses at EUR 26 billion–EUR 30 billion (Deloitte 2017). The third valuation estimated the liquidation value to all shareholders and creditors between EUR 95 billion–EUR 104 billion (Deloitte 2018a).

#### *First Provisional Valuation*

On May 24, the SRB commissioned the first, provisional valuation of Popular given its rapidly deteriorating liquidity ratios and significant withdrawals from corporate clients and local authorities (El Economista 2017; SRB 2017b; SRB 2017f). The purpose was to help the ECB determine whether Popular was “failing or likely to fail” (SRB 2017a). Article 20(10) of the BRRD requires the resolution authority to procure a provisional valuation of the firm before making a FOLTF determination (SRB 2018). Because a balance-sheet-solvent entity can experience a liquidity crisis, the European General Court established that insolvency of an entity is not a precondition for a FOLTF assessment (CJEU 2022b).

As per Valuation 1, Popular had nonperforming assets (NPAs) of EUR 8.5 billion and assets held for sale of EUR 8.8 billion, which would be marked down by EUR 0.5 billion–EUR 0.8 billion and EUR 1.7 billion–EUR 2.3 billion, respectively. Popular's total liabilities were valued at EUR 136.3 billion, deposits at EUR 81.1 billion, and total equity at EUR 8.4 billion, including an estimated markdown of EUR 1.8 billion–EUR 2.4 billion in capital reserves. The valuation report stated that liquidity of Popular was key in triggering the failure of the bank, with deposit outflows exceeding EUR 0.5 billion per day for the past previous weeks.

Popular's liquidity and funding conditions triggered the FOLTF assessment as per the SRM (SRB 2017b).

### *Second Provisional Valuation*

Deloitte delivered the second valuation on June 6. The purpose was to help the SRB understand "what may constitute commercial terms for selling the bank through the 'sale of business' tool" (SRB 2018). The BRRD states that a second valuation of an institution's assets and liabilities is also necessary to determine the treatment of creditors and shareholders (CJEU 2022b). This valuation, which was also deemed provisional, included a preliminary assessment of the treatment that shareholders and creditors would have received if Popular had been wound up under normal bankruptcy proceedings (SRB 2018).

For the second valuation, the SRB instructed Deloitte to value the firm under the assumption of a sale-of-business resolution (Banco de España 2015; Deloitte 2017; European Parliament 2014b; 2014a). Deloitte and outside commentators viewed the 12-day timeline as short for an institution as complex as Popular (Deloitte 2017; Gleeson and Guynn 2016). However, a short timeline for a provisional valuation is consistent with the BRRD. The SRB deemed this valuation provisional for the purposes of assessing Popular's fair market value in the sale process conducted by the FROB.

The Valuation 2 report noted that the draft valuation had been produced in an extremely short period due to Popular's liquidity position, was highly uncertain, and hence was provided for provisional purposes as per Article 36 of the BRRD. As seen in Figure 4, the best case assumed a lower adjustment to total assets than the worst case and best estimate scenarios. The report's best estimate valuation for Popular provided a negative adjusted equity value of EUR 2.0 billion, and only the best case presented a positive adjusted equity value of EUR 1.3 billion, with consolidated equity value of EUR 10.8 billion as of March 2017. The report also noted that total recoveries for all creditors would range between EUR 116 billion and EUR 121 billion, and the implied losses for all liabilities and equity would be EUR 26 billion–EUR 31 billion (Deloitte 2017). However, the SRB later labeled this valuation "decisive" for the purposes of executing the resolution scheme (CJEU 2022b; SRB 2017a; Deloitte 2017; European Parliament 2014b).

**Figure 4: Valuation 2 of Popular and List of Economic Adjustments**

Line Item	(in EUR billions)		
	Best Case	Worst Case	Best Estimate
Loans and Receivables	(2.7)	(7.0)	(3.5)
Real Estate Assets	(2.6)	(3.4)	(3.1)
Deferred Tax Assets	(2.7)	(3.0)	(2.7)
Legal Contingencies*	-	-	-
Intangible Assets	(2.2)	(2.6)	(2.2)
Equity and Fixed Income	(0.4)	(0.5)	(0.5)
JVs, Associates, and Subsidiaries*	-	-	-
<b>Total Adjustments</b>	<b>(12)</b>	<b>(21)</b>	<b>(15)</b>
Consolidated Equity (as of March 2017)	10.8	10.8	10.8
<b>Total Equity + Adjustments</b>	<b>(1)</b>	<b>(10)</b>	<b>(4)</b>
Cost Savings	2.3	1.6	1.9
<b>Total Adjusted Equity</b>	<b>1</b>	<b>(8)</b>	<b>(2)</b>

Note: '\*\*' Line items were not disclosed in the public valuation report

Source: Deloitte 2017.

To value Popular the second time, Deloitte stated it could not use the firm's market capitalization, given its volatility; nor a price-to-book-multiple valuation, given the expected book value was negative; nor a dividend discount model, owing to the limited information available to Deloitte. Instead, Deloitte applied specific methodologies for each asset and liability class to estimate the liquidation value of the firm on a consolidated basis (Deloitte 2017).<sup>7</sup> This provisional valuation confirmed the SRB's determination to sell Popular to the highest bidder (SRB 2016).

### Third Valuation

The SRB commissioned the third and final valuation in June 2017, and Deloitte delivered it on June 12, 2018 (Deloitte 2018a; SRB 2020a). Deloitte stated the process was delayed due to issues with the bank's providing quality and consistent data (Deloitte 2018a). This valuation was made in accordance with Article 20(16) of the BRRD. The purpose was to evaluate whether creditors would have fared better under normal insolvency proceedings; ultimately, the SRB determined its treatment would not have left creditors worse off (SRB 2020b). Figure 5 summarizes the Valuation 3 report, which concludes that all creditors would have suffered higher losses in the range of EUR 23.5 billion–EUR 34.2 billion, in comparison to the EUR 11.4 billion losses absorbed after Popular's resolution plan (Deloitte 2018a).

<sup>7</sup> For more information on Deloitte's valuation approach, see SRB (2017b) and Deloitte (2017).

**Figure 5: Valuation 3 of Popular and List of Credit Losses in Liquidation**

	(in EUR billions)					
	Best Case			Worst Case		
	18 mon	3 yrs	7 yrs	18 mon	3 yrs	7 yrs
<b>Assets in Liquidation</b>						
Total Asset Realizations	99.3	101.5	104.1	95.1	97.6	100.5
<b>Creditor Losses in NCWO outcome</b>						
Equity Value (as of June 2017)	9.4	9.4	9.4	9.4	9.4	9.4
Subordinated Debt	2.0	2.0	2.0	2.0	2.0	2.0
Intra-group Debt	8.8	8.8	8.8	8.8	8.8	8.8
Unsecured Creditors	8.0	5.8	3.3	14.0	11.5	8.5
<b>Total creditor losses in liquidation</b>	<b>28.2</b>	<b>26.0</b>	<b>23.5</b>	<b>34.2</b>	<b>31.7</b>	<b>28.7</b>

Note: All creditors lost EUR 11.4 billion in the resolution of Banco Popular

Source: Deloitte 2018a.

### Deviations from the Resolution Plan

On December 5, 2016, SRB had adopted its resolution plan for Popular with the FROB's assistance (European Parliament 2014b; SRB 2016; SRB 2017a; SRB 2019). Under the plan, Popular would have stayed in business as a going concern through a bail-in of equity and other eligible liabilities and a sale of the firm's interests in a half dozen joint ventures and subsidiaries.

However, when Popular got into trouble, the SRB deviated from the preexisting resolution plan. Instead of bailing in a broad range of liability holders so that the bank could continue to operate as a going concern, the authorities wrote down or converted capital instruments and then sold all equity in the parent company to new owners.

The FROB led the tender process and executed the transfer of assets to Santander. The deal with Santander was signed and Popular was officially put into resolution on the morning of June 7, with an announcement occurring before market open.

Popular's resolution plan assumed a deficient capital position. The events leading to the SRB's "failing or likely to fail" assessment on June 6, 2017, were liquidity strains—that is, the increased likelihood that Popular would be unable to pay its debts and other liabilities as they fell due (SRB 2017a). As a result, a going-concern bail-in resolution, which the 2016 plan deemed the optimal way to stabilize Popular while allowing it to remain open, proved insufficient in June 2017 (SRB 2016; SRB 2017a).

The 2016 plan for Popular included a stabilization phase involving a bail-in without separating the institution, and a restructuring phase for the sale of the institution's subsidiaries. Popular had already successfully raised EUR 1 billion through an equity rights issue in May 2015 (Deloitte 2018a).

The 2016 plan required Popular's management to submit a reorganization plan within one month of the bail-in, but this plan also assumed a scenario in which Popular's distress was



less immediate, and its resolution process less urgent, than the events that ultimately transpired in June 2017 (European Parliament 2014b; 2014a; SRB 2017a). Ultimately, the SRB did not apply the bail-in tool but rather wrote down capital instruments after initiating the sale process.

The SRB concluded in its FOLTF assessment for the 2017 scheme that no alternate measures could prevent the failure of Popular. The pace of deteriorating liquidity at Popular would not allow a reasonable time frame for a private solution or allow a bail-in to sufficiently restore the ability of Popular to meet its future liabilities (SRB 2017a).

The BRRD establishes that the supervisory authority (in Popular's case, the ECB) should assess the institution as failing or likely to fail, and only in exceptional circumstances (and by concession) should the resolution authority (the SRB) make this determination (European Parliament 2014a; Gleeson and Guynn 2016, 162). This is because the supervisory authority is likely to have the most information on the institution's situation (Gleeson and Guynn 2016, 162–63). Following the FOLTF designation, the resolution authority should determine whether resolution is necessary. The ECB made the FOLTF assessment under Article 18 of the Single Resolution Mechanism Regulation (SRMR) after consultation with the SRB (ECB 2017; SRB 2017f). The SRB then adopted the sale of business resolution plan, which Spain's FROB implemented according to Law 11/2015 (Banco de España 2015, Art. 2.1.d; FROB 2017b; SRB 2017f).

The ECB's FOLTF designation is an important step in SRMR resolution procedures and formally activates the SRB's resolution powers. The supervisory authority can make this assessment if an institution: (a) breaches its regulatory requirements in such a way that could cause the firm to lose its banking authorization; (b) has entered the zone of insolvency (that is, its assets are valued less than its liabilities); (c) is unable or will soon be unable to meet its liabilities as they fall due; or (d) requires extraordinary public funding from taxpayers, in the form of a state guarantee of the central bank's lending, a state guarantee of the bank's own liabilities, or an outright capital injection (European Parliament 2014a; Gleeson and Guynn 2016). Popular's use of ECB-funded ELA, via the Banco de España, did not influence the ECB's FOLTF assessment. Rather, the ECB's determination was based on Popular's negative equity capital (per the SRB-commissioned valuation by Deloitte); its infringement of regulatory requirements (such as the liquidity coverage ratio, or LCR, which fell below the 80% minimum in April 2017); and, based on the above, the likelihood that Popular would fail to meet its obligations as they fell due (SRB 2017a).

### **Other Options**

Although the ECB approved Banco Popular's second request for ELA, Banco de España rejected it. After the bank's resolution, some claimed that it might not have failed had Spain's central bank extended the requested liquidity.

Besides its sale-of-business tool, the SRB has three other tools available to wind down failing institutions: establishing a bridge institution to temporarily hold the failed entity, separating "bad" assets from "good" assets in different vehicles, and bailing in creditors and

shareholders (SRB 2019).<sup>8</sup> These tools often interact or overlap in some way. For example, the SRB could apply the bail-in tool in conjunction with a bridge institution, asset management (asset separation) vehicle, or a sale of business. The bridge institution tool is sometimes combined with the asset separation tool. For Popular, the SRB determined that a write-down of capital instruments was insufficient on its own; its other tools were deemed inappropriate given the timeline of Popular's resolution. Specifically, the SRB determined that the resolution objectives could be accomplished through the sale-of-business tool on a more immediate time frame than through the bridge institution tool, which is designed to maintain critical operations while selling the firm over a two-year period. Speed was necessary given Popular's rapidly deteriorating liquidity position (SRB 2017a).

Before resolving an institution, the SRB has to consider whether it should be wound up under normal insolvency proceedings (SRB 2019). In the case of Popular, the SRB determined that this was not appropriate (SRB 2017a). Credit institutions in Spain are subject to normal insolvency proceedings under Law 22/2003; however, an exception is made for credit institutions that fall under Law 11/2015, which functionally transposes the BRRD into Spanish legislation. In the resolution plan adopted for Popular on December 5, 2016, the SRB determined that normal insolvency proceedings were not credible for Popular, given its size, interconnections, and the risks its failure posed to Spain's financial system. In particular, the SRB determined that normal insolvency proceedings in the courts of Spain would render Popular's deposits unavailable for withdrawal, and the SRB could not rule out the possibility that a court would terminate Popular's loan contracts, which would have had destabilizing effects in Spain's lending market (SRB 2017a).

On December 5, 2016, SRB adopted a resolution plan for Popular with FROB's assistance (European Parliament 2014b; SRB 2016; SRB 2017a; SRB 2019). This preexisting resolution plan prescribed a bail-in to stabilize the firm and a sale of the business's subsidiaries over a 30-day restructuring period (SRB 2016). This resolution plan assumed that Popular would fail due to a deficient capital position, whereas the events leading to Popular's FOLTF assessment on June 6, 2017, were liquidity strains—that is, the increased likelihood that Popular would be unable to pay its debts and other liabilities as they fell due (SRB 2017a). As a result, the bail-in tool, which was deemed the optimal tool to stabilize Popular according to the 2016 plan, proved insufficient for the 2017 resolution, and sale of business was, as planned in 2016, the preferred resolution tool for a resolution of Popular's parent company (SRB 2016; SRB 2017a). That resolution plan identified about EUR 47.5 billion in liabilities that could be bailed in, of the EUR 151 billion in total liabilities (SRB 2016).

## **2. Part of a Package: Spain granted Popular two emergency liquidity assistance requests for EUR 3.6 billion to meet depositor withdrawals on the two days preceding its resolution.**

According to the *Financial Times*, Spain granted Popular a total of EUR 3.6 billion in emergency liquidity assistance, which FROB accessed via the ECB (Buck, Arnold, and

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<sup>8</sup> The BRRD also allows for a "government stabilization tool," but this is a last resort option and is not technically a resolution tool (World Bank 2017, 33).

Sanderson 2017; Buck and Brunsden 2017). Popular posted EUR 40 billion in collateral, which, under ELA rules, should have entitled it to EUR 10 billion in ELA, though it only received EUR 3.6 billion (Buck, Arnold, and Sanderson 2017; Buck and Brunsden 2017). On Monday, June 5, Popular requested EUR 1.9 billion from the Banco de España (Buck and Brunsden 2017). The following day, Popular requested another EUR 7.6 billion. ECB approval is required for ELA that exceeds EUR 2 billion; the ECB approved it, but Banco de España reportedly did not, despite the fact that EUR 26 billion of Popular's EUR 40 billion in unencumbered assets met Banco de España's ELA criteria, thereby entitling Popular to upwards of EUR 10 billion in ELA. Instead, Banco de España granted Popular an additional EUR 1.6 billion, bringing the total ELA to EUR 3.6 billion (Buck and Brunsden 2017; Mesnard, Margerit, and Magnus 2017).

Importantly for Popular, Spain's ELA did not qualify as State Aid under EU guidelines because it was not guaranteed by the member state (it was provided by the central bank) and was limited in time (European Parliament 2014b; Kokkoris and Olivares-Caminal 2016). Had the ELA qualified as State Aid, the central bank's assistance would have automatically triggered resolution under Article 32 of the BRRD (European Parliament 2014a; Gleeson and Guynn 2016). Article 32 of the BRRD lists the conditions for resolution of an institution if all of the following conditions are met: (a) the institution is failing or likely to fail, (b) the institution has no private alternative sources of funding in a reasonable time frame, and (c) the resolution action is necessary in the public interest. As per Article 32(4) (d), the provision of extraordinary public financial support to an institution deems the entity to be failing or likely to fail (European Parliament 2014a).

The near failure of Popular drew attention to other Spanish lenders with high amounts of nonperforming assets and insufficient provisions or liquidity, raising the risk of contagion. The Monday after the sale of Popular, another large Spanish lender, Liberbank, experienced a sharp decline in its share price and the market value of its Tier 2 securities (Buck and Arnold 2017; Mesnard, Margerit, and Magnus 2017). In response, National Securities Market Commission (Comisión Nacional del Mercado de Valores, or CNMV) instituted a one-month ban on short selling Liberbank stock; this ban was subsequently extended for another four months (Buck and Arnold 2017; Mesnard, Margerit, and Magnus 2017; CNMV 2017d; CNMV 2017c; CNMV 2017a).

**3. Legal Authority: The SRB used one of its four authorized resolution tools to resolve Popular according to objectives prescribed by the SRMR; the FROB executed the SRB's resolution plan according to the SRMR and Spanish Law 11/2015.**

The SRB initiated a sale of business and wrote down capital instruments according to Articles 38 and 59 of the Single Resolution Mechanism Regulation, respectively.

Article 38 of the BRRD discusses the sale-of-business tool, which allows a government to transfer equity shares and assets, liabilities, and rights of the institution under resolution. The transfer of assets has to conform with valuation norms specified in Article 32 of the BRRD (European Parliament 2014a).

Article 43 of the BRRD allows a government to use the bail-in tool to recapitalize a specific institution or to provide capital to a bridge institution along with using the asset separation tool or the sale-of-business tool. Article 63(1) specifies the general powers of a resolution authority. Article 44(1) mentions that the bail-in tool can apply to all the liabilities of an institution. Article 44(3) states that “in exceptional circumstances” when the bail-in tool is applied, the resolution authority may exclude some liabilities that are critical to the core functioning of the institution or at the risk of causing widespread contagion. The resolution authority is allowed to purchase or cover losses for such capital instruments only after the equity and other capital holders have borne losses up to 8% of the total liabilities of the institution (European Parliament 2014a).

Article 59 of the BRRD authorizes a government to write down or convert capital instruments of an institution in resolution, either as an independent action or in combination with other resolution tools as per Articles 32 and 33. Articles 32 and 33 discuss the conditions to determine if an institution or a holding company is FOLTF. Article 44(2) provides the liabilities that are excluded from write-down and conversion powers, including covered deposits, secured liabilities, and other liabilities to institutions, fiduciaries, employees, and deposit guarantees (European Parliament 2014a).

There were three acts of legislation relevant to Popular’s resolution. At the EU level, the Bank Recovery and Resolution Directive and the SRMR determined the SRB’s resolution actions and dictated the objectives of its sale-of-business resolution plan (European Parliament 2014a; 2014b; FROB 2017b). The SRB acts according to the SRMR, and there was no major difference in the resolution procedures between the BRRD and SRMR. At the national level, Law 11/2015 regulates the FROB’s resolution of firms in Spain; this law transposes the BRRD into Spanish legislation (FROB 2017b; SRB 2017a).<sup>9</sup> Credit institutions in Spain were subject to normal insolvency proceedings under Law 22/2003; however, cases of credit institutions entering resolution fall under Law 11/2015, which transposes the BRRD into Spanish law. In the resolution plan adopted on December 5, 2016, the SRB determined that normal insolvency proceedings were not credible for Popular, given its size, interconnections, and its risks to Spain’s financial system (SRB 2017a).

The SRB is empowered to resolve firms under the supervision of the ECB, or firms otherwise deemed significant, as well as cross-border groups, where a parent company and its subsidiary operate in more than one EU member state (Popular 2017; SRB 2017e). It can resolve a firm by (a) forcing shareholder and creditor bail-ins, (b) initiating a sale of business, (c) establishing a “bridge bank” to prepare for sale, and (d) establishing an asset management vehicle (commonly referred to as a “bad bank”) to receive volatile assets for wind-down or sale. Resolution authorities use the asset management vehicle only in conjunction with one of the first three tools (SRB 2017e). Authorities can use the bail-in tool with any of the other three tools, and it may be insufficient on its own (SRB 2017e; SRB 2017a).

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<sup>9</sup> For more information on the BRRD, which was introduced on May 15, 2014, see Binder and Singh (2016).

Before the SRB can act as the designated resolution authority, it must determine that (a) the distressed firm is experiencing significant difficulties such that it is failing or likely to fail (the FOLTF test), but (b) private sector measures are not reasonably available, and (c) a resolution is in the public interest (European Parliament 2014b; FROB 2017c).

The FROB was required to implement SRB's plan according to the SRMR, and it was empowered to do so by its designation as a national resolution authority under Law 11/2015 (Banco de España 2015; European Parliament 2014b). The SRB monitored the implementation of this plan (European Parliament 2014b).

The BRRD and the SRMR prescribe specific resolution objectives, of equal importance for European single resolution authorities and, where relevant, national resolution authorities: (a) to ensure the continuity of the firm's critical functions; (b) avoid negative impacts to financial stability of the market or economy of the EU or a member state; (c) minimize public funding; and (d) protect depositors, client funds, and client assets (European Parliament 2014a; 2014b; SRB 2017e).

In pursuit of these objectives, the SRB (and national resolution authorities) have to minimize costs and avoid the destruction of value unless deemed necessary for an orderly resolution (SRB 2017e). The resolution authorities are empowered (and required) to balance these equally weighted objectives; however, they are bound by the following rules that govern EU resolution proceedings: shareholders bear first losses, creditors are treated *pari passu*, no creditor can be made "worse off" by the resolution (as compared to normal insolvency proceedings), management must be replaced while also assisting in the resolution, and covered deposits will be fully protected under the Deposit Guarantee Scheme Directive at a recommended coverage of EUR 100,000 (per depositor, per bank) (European Parliament 2014b).

Once a firm in financial distress is assessed as FOLTF, the SRB then determines whether any private resolution process is viable and whether the firm must be wound down in the public interest (European Parliament 2014b; SRB 2014). At this point, Article 20 of the SRMR requires the SRB to seek a valuation of the firm in order to determine the appropriate resolution plan; this valuation is usually provisional until a thorough and accurate valuation can take place (European Parliament 2014b).

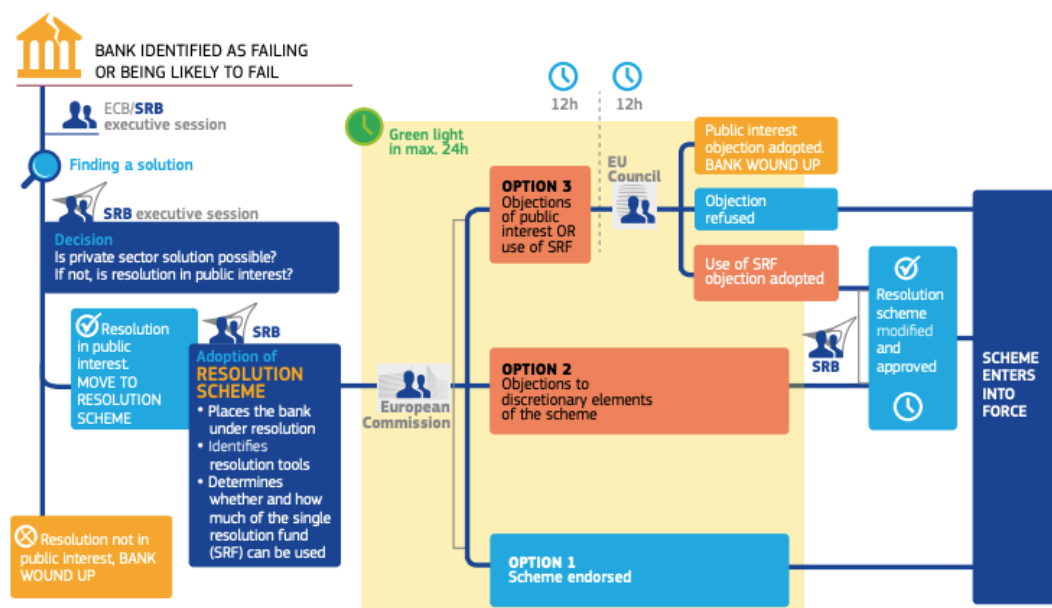
In submitting the binding offer for Popular, both potential buyers, BBVA and Santander, had to ensure continuity of Popular's businesses under Spain's Law 10/2014 (Banco de España 2014; FROB 2017a). The European General Court confirmed that the FROB, in meeting the SRB's request to contact only those institutions that had participated in the private sale process of Popular, was entitled to solicit particular potential buyers (CJEU 2022b).

#### **4. Administration: The ECB made the formal FOLTF assessment, after which the SRB administered the resolution process and Spain's national resolution authority, the FROB, tendered the sale and implemented the plan.**

The SRM is overseen by the SRB, which is the designated resolution authority for Eurozone banks deemed significant or otherwise falling under EBA supervision (Gleeson and Guynn

2016, 204). The administrative responsibilities of Popular's resolution fell to the SRB and Spain's national resolution authority, the FROB, with the ECB, European Commission, and European Council involved as well (see Figure 6 for a stylized flow of the resolution process; for a decision flow specific to Popular, see Figure 11 in Appendix B).

**Figure 6: Stylized Process Flow for Resolving Failing Banks under the SRB's Remit**



Source: SRB 2019.

Under the BRRD, the write-down of AT1 and Tier 2 capital instruments through WDCC is functionally automatic, used without delay, though only after a second valuation has taken place, and as a precondition for any resolution action (European Parliament 2014a; Gleeson and Guynn 2016; World Bank 2017).<sup>10</sup> The SRB had ordered the provisional valuation performed on May 24, which was completed by June 2. The SRB ordered the conversion of shares and the FROB executed the write-down before executing the full sale-of-business resolution scheme informed by the second valuation, delivered June 6 (Banco de España 2015; SRB 2017a).

Ultimately, the FROB executed the SRB's resolution scheme (SRB 2017a). The FROB was empowered to assume administrative authority over Popular under Law 11/2015, including the power to assume the responsibilities of Popular's management and shareholders, to

<sup>10</sup> The trigger for write-down power is not meaningfully different from the trigger for resolution power—in other words, both occur once the conditions for resolution have been met—but they are sequential: the write-down is supposed to occur before resolution—and therefore any further bailing in of creditors—takes place (European Parliament 2014a, Art. 59[3][a]; Gleeson and Guynn 2016, 169–70). The important distinction is that the write-down power is meant to be automatic.

write down and convert capital instruments and subordinated debt, and to execute the transfer of assets to Santander (Banco de España 2015).

Popular was subject to the consolidated supervision of the ECB and to the SRMR (European Parliament 2014b; EU 2013; FROB 2017c).

Jefferies International Limited, which has a joint venture in Spain with Arcano, was retained to market Popular to potential buyers (Jefferies 2017). Jefferies-Arcano also sought the assistance of two investment banks, JPMorgan and Lazard, to contact potential buyers (Jefferies 2017). Lazard contacted 35 potential bidders, and JPMorgan conducted a competitive private sales process focusing on five large Spanish banks (Jefferies 2017).

**5. Governance: The ECB made the “failing or likely to fail” assessment; its decision on the bank’s resolution required the EC’s approval, and its decisions are subject to review by several European authorities.**

Upon convening an extended executive session (including the FROB), the SRB adopted a resolution scheme for Popular and determined the sale-of-business tool as the appropriate resolution mechanism (Kościńska 2018; SRB 2019). The FROB executed the SRB’s resolution scheme and reported to the SRB about the execution of the scheme, including a final report (European Parliament 2014b; SRB 2017a).

An executive session comprises the SRB’s chair, its four full-time board members, and a nonvoting vice chair (SRB 2019). All resolution decisions occur in an executive session (European Parliament 2014b; Hadjiemmanuil 2016). When the executive session is weighing intervention into a single firm, the meeting also invites board members from the relevant national resolution authorities for the bank under consideration (European Parliament 2014b; Hadjiemmanuil 2016; SRB 2019). The relevant national resolution authorities include the resolution authority in any member state in which the firm under deliberation operates significant branches (SRB 2019). If a consensus decision is not possible, the chair and four board members take a decision by majority vote; the national resolution authorities, as visiting board members, lose their power to vote (SRB 2019). The European Commission and ECB have permanent observer status in the SRB’s sessions (SRB 2019).

During Popular’s resolution, the ECB and SRB convened an “extended” executive session that included the SRB’s chair, vice chair (a nonvoting position), four full-time board members, and board members of the FROB (SRB 2019). The ECB and European Commission had permanent observer status in this meeting (SRB 2017a; SRB 2019). The executive session held in the early morning hours of June 7, at which the SRB formally adopted the resolution plan, included the FROB and Banco de Portugal (SRB 2018).

The SRB acted in consultation with the EC and the FROB (SRB 2019). The EC had to endorse the plan within 24 hours or, if no objection was received before 24 hours, the plan automatically entered into force (SRB 2019). The EC is said to have approved the plan to wind down Popular within 77 minutes of receiving it (Laidlaw 2018). The EC is entitled to reject a resolution plan on the basis of public interest, in which case the resolution becomes

the responsibility of the national resolution authority, to wind up according to normal insolvency proceedings (SRB 2019). The European Commission did not object to Popular's resolution, nor the expansion of Santander that resulted from its purchase of Popular's business (European Parliament 2017).

Popular's designated resolution authority (the SRB) was formally separated from the supervisory authority (the ECB), thereby limiting intrinsic conflicts of interest (World Bank 2017). The SRB was accountable to, and submitted an annual report to, the European Parliament, the European Council, and the European Commission (European Parliament 2014b; SRB n.d.).

European law allows plaintiffs to bring legal action against the SRB without requiring legal action against the EC for its endorsement of the SRB's plan (CJEU 2022b).

The SRB's decisions are reviewed by an Appeal Board and are subject to judicial review by EU courts. Like the ECB, the SRB is also politically accountable to the European Parliament and European Council. The European Parliament has veto power over the appointment and dismissal of SRB officials, but the SRB generally interacts with Parliament only two to six times per year, which is less often than its interactions with the Council. The SRB generally responds to questions posed by national parliaments, too, and the SRB's chair appeared before the Spanish Parliament to discuss Popular's resolution. The European Court of Auditors produces occasional reports on the SRM, including the SRB's activities (Zeitlin and Bastos 2020). The European Ombudsman also reviews the SRB's decisions, including the SRB's delay in deciding whether Popular's shareholders and creditors deserved compensation (Zeitlin and Bastos 2020). The Ombudsman found that the high volume of comments (an estimated 23,000) caused the delay (EO 2019; Zeitlin and Bastos 2020).

The FROB's decisions are overseen by a Governing Committee comprising the chair of the FROB and four board members appointed by the central bank, one of whom, in the position of vice chair, is the deputy governor of the Banco de España (Huerta 2019). The Ministry of Economy and Competitiveness appoints three additional members, the vice president of the National Securities Market Commission, and two representatives from the Ministry of Finance and Public Administration. The 2015 law that established this committee indicated that the chair of FROB is to be independent from Banco de España and confirmed by the legislature (Sankar 2021).

#### **6. Communication and Disclosure: European authorities did not make any announcements during the resolution process, which occurred overnight, but published statements before and after Popular's resolution.**

The SRB's execution of Popular's resolution occurred between close of business on Tuesday, June 6, and opening of business on Wednesday, June 7, and authorities issued no notices during the resolution process. However, there were notable communications before and after the resolution.

On May 23, 2017, SRB Chair Elke König said the SRB was "watching" developments at Popular (Court of Justice of the European Union 2022, para. 612). On May 31, while Popular



was being marketed privately (through Deutsche Bank) and by the SRB and FROB (through Jefferies-Arcano), Reuters reported that König had warned EU officials that Popular may need to be wound down if it could not find a buyer (Mesnard and Katopodi 2017). The same day, the SRB issued a press release stating that it does not issue warnings about specific banks (SRB 2017c). Some creditors later cited these comments as major contributing factors to the run on the bank that began in earnest on June 5 (Spink 2017). As late as April, Spain's finance minister, Luis de Guindos, said Popular had “no problems of liquidity” (Economist 2017).

On Friday, June 2, the SRB requested Popular to permit access for any potential purchasers to a virtual data room to access the company's financials (Popular had, at some point before June 2, permitted access to some potential bidders). On June 3, the SRB instructed the FROB to begin the private sales process in advance of a potential resolution. The FROB circulated a sale letter on June 5, 2017, to Santander and BBVA. According to the confidentiality agreements signed by the two parties, consent from the FROB was required for either potential bidder to contact Jefferies-Arcano, Popular, or any affiliates of Popular about the deal. On June 6, the FROB amended the letter to require bids that evening (SRB 2018). Only Santander bid, and the terms of its offer required the FROB to write down Popular's capital instruments (SRB 2018).

On the morning of June 7, all the European authorities and the Spanish authorities (FROB, Banco de España, and CNMV) issued press releases announcing the resolution of Popular (ECB 2017; FROB 2017b; SRB 2017g; SRB 2017a). The ECB stated that the timing of its communications following its FOLTF assessment met the “need to communicate the solution (resolution, transfer of business in liquidation, etc.) together with the problem (failure of the bank)” (ECB 2018).

In early July, the EC decision approving the SRB's resolution scheme for Popular was published in the *Official Journal of the European Union* (European Parliament 2017). On July 11, the SRB published a redacted version of its resolution decision, adopted in the early morning hours of June 7; later that year, it published a less redacted version (SRB 2018). After the resolution, SRB also released the decision to market Popular to potential buyers (on June 3) and the letter sent from the FROB to interested bidders (on June 6) (FROB 2017a; SRB 2017d). On November 28, 2017, the SRB Appeal Board reviewed concerns about the volume of information redacted from documentation the SRB had published related to Popular's resolution, including Deloitte's valuations. In a memo released after the Appeal Board reviewed complaints, the SRB explained that these redactions were in the public interest, in the interest of Popular's successful resolution, and necessary in order not to influence the third valuation conducted by Deloitte (which would be used to comply with the “no creditor worse off than in liquidation” right) (SRB 2018).

Both the SRB and FROB produced timely, and mostly simultaneous, announcements of major decisions in the resolution, from the initial sale process to the key terms of the final resolution decision. Following the resolution, the SRB released additional documentation, including valuations of Popular, albeit with financial statistics redacted. Some observers in the financial press, as well as investors in Banco Popular, criticized the authorities for

keeping this information redacted, however the SRMR/BRRD entitles the SRB to keep some resolution information confidential.

**7. Source and Size of Funding: Because Popular's shareholders and creditors were bailed in and the insolvent firm was sold to Santander for a positive sum, European authorities incurred no costs to the Single Resolution Fund in resolving Popular; Santander raised EUR 7 billion in capital to restore Popular to solvency.**

Under the BRRD, each EU member state must establish a national fund organized for and dedicated to resolution financing. In Eurozone states, these financing arrangements are pooled into the Single Resolution Fund (SRF). Outside the Eurozone, these arrangements are financed by the banking sector. Importantly, these funds are neither used to recapitalize failing institutions nor to absorb losses (Gleeson and Guynn 2016).

In the case of Popular, the authorities did not have to draw on the Single Resolution Fund. By selling Popular's (insolvent) business to Santander for a (positive) nominal value of EUR 1, the SRB, FROB, and ECB avoided incurring any losses on Popular's resolution. Santander incurred a EUR 300 million integration cost, partially offset by a profit of EUR 263 million recorded by the Popular business line. Santander group gained EUR 74.3 billion in deposits (excluding repurchase agreements and mutual funds) from acquiring Popular. The acquisition made Santander Totta the largest private sector bank in Portugal and allowed Santander to recover its leadership position in Spain (Santander 2018). As seen in Figure 4, Popular's total assets were marked down in the range of EUR 12 billion–EUR 21 billion.

As part of the deal to acquire Popular, Santander committed to restoring the business line to solvency, in part to prevent deterioration of Santander's capital ratios and breaching regulatory requirements that would endanger its banking authorization (Mesnard, Margerit, and Magnus 2017). The integration of Popular's RWAs had a negative EUR 0.71 billion impact on Santander's common equity, or 114 basis points (bps) on its CET1 ratio (Santander 2018).<sup>11</sup> After the write-down of shareholders and junior bondholders (roughly EUR 2 billion), Santander had to raise roughly EUR 7 billion of capital to restore its capital (Mesnard, Margerit, and Magnus 2017). Santander raised this capital on July 26. The issuance was eight times oversubscribed and came to 1.4 million new shares at a par value of EUR 4.85 each, which represented 10% of the combined entity's share capital. Santander intended to book EUR 7.9 billion in additional provisions, including EUR 7.2 billion on real estate exposures related to Popular. On August 8, 2017, Blackstone purchased Popular's (foreclosed) assets, mainly nonperforming loans from its real estate portfolio (a gross book value of EUR 30 billion) and 100% of the share capital of Popular's asset management company, Aliseda (Mesnard, Margerit, and Magnus 2017; Santander 2018). Santander reported that the sale of these assets improved its capital ratio by 12 bps (Santander 2017c).

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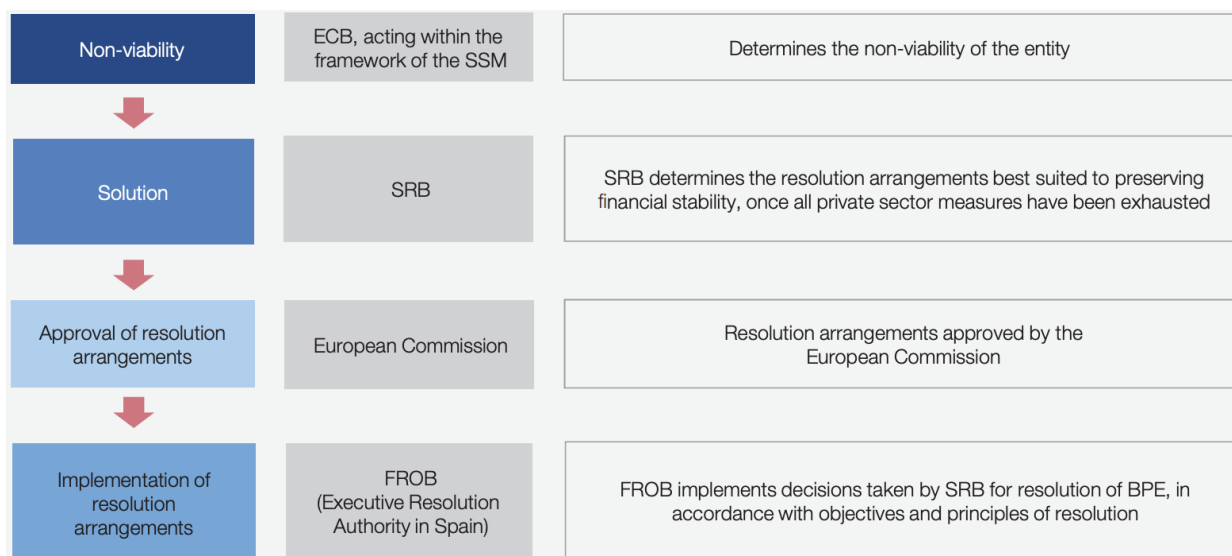
<sup>11</sup> Incidentally, the EBA had conducted a capital transparency exercise in June 2017, which included Popular's RWAs in the newly expanded Santander entity but did not include Santander's July 2017 share issuance (Santander 2018). Had this issuance been included in the exercise, Santander's CET1 ratio would have been 10.72% (Santander 2018).

On June 7, 2017, the FROB earmarked any proceeds from Santander's purchase of newly converted shares that belonged to former Tier 2 bondholders in the following priority: (a) repaying the SRB and FROB for any costs incurred during the resolution and (b) compensating the holders of the former Tier 2 securities for the mandatory conversion (SRB 2017a). However, the SRB did not anticipate any compensation for former Tier 2 security holders. As seen in Figure 4, Deloitte's valuation of Popular indicated a negative net worth of EUR 2 billion–EUR 8 billion (Deloitte 2017). The SRB initiated the sale process for Popular, and as per the bid received from Santander, wrote down the implied amount of Popular's CET1 and AT1 capital instruments. Popular's Tier 2 debt was converted to equity shares and included in the sale to Santander for a purchase price of EUR 1 (SRB 2017a).

#### **8. Approach to Resolution and Restructuring: The SRB sold Popular to a Spanish competitor, Santander, after writing down shareholders and junior bondholders.**

The SRB wrote down Popular's shareholders and junior bondholders, then sold the business to Santander. Several steps took place before the SRB could resolve Popular by sale of business.

On June 6, Popular determined that it had run out of liquidity, assessed itself as likely to fail, and informed the ECB. The ECB's Governing Council agreed and approved the FOLTF assessment and informed the SRB, which triggered the resolution process under the SRM. A private sales process, which Popular had explored with a target date of end of June, yielded no bidders, but Spanish lenders BBVA and Santander had expressed some interest (SRB 2017a). The SRB was required to market the firm as part of the resolution process, which it did through the FROB, but under the BRRD/SRMR, it was entitled to do so only with those firms that had expressed interest in acquiring Popular during the private sales process (BBVA and Santander) (European Parliament 2014a; 2014b; SRB 2017a; SRB 2017d). Ultimately, FROB, along with the Bank of Spain and Spain's Finance Ministry, led the tender process and negotiations with Santander. The SRB determined that central bank liquidity was likely unavailable in the amounts needed for Popular and that ELA would be insufficient given the size and urgency of Popular's liquidity needs (SRB 2017a). The ECB also found no supervisory actions or "early intervention measures" (such as changing management or assigning the firm a temporary administrator) that would remedy Popular's problems in a reasonable time frame (European Parliament 2014a; SRB 2017a). See Figure 7 for an overview of Popular's resolution process.

**Figure 7: Overview of Popular's Resolution Process**

Source: Banco de España 2017.

The SRB initiated the sale of Popular to Santander after writing down Popular's shareholders and investors in AT1 capital and Tier 2 capital (SRB 2017a). The SRB determined that writing down these regulatory capital investors without taking further action would be insufficient to restore Popular's liquidity on its own (European Parliament 2014b; SRB 2017a).

On Sunday, June 4, BBVA and Santander signed nondisclosure agreements and reviewed Popular's books. In accordance with the BRRD, the SRB gave the marketing requirements to the FROB, which tendered the sale of Popular, issuing a sale letter on June 6, 2017, asking the recipients—BBVA and Santander—to submit a binding offer by that evening, for 4.2 million ordinary shares at par value of EUR 0.50 per share. If the recipients bid below this nominal value, the difference up to the nominal value would have been written down. If the bid was zero, the FROB encouraged recipients to bid on the shares under the assumption that the FROB would execute a 100% conversion of additional Tier 1 capital, comprising 8,375 convertible perpetual bonds with an outstanding nominal value of approximately EUR 1.4 billion. If the bidders were still not interested, FROB encouraged a bid on the shares under the assumption of an AT1 conversion and write-down plus a 100% conversion of Tier 2 capital, comprising 453,949 bonds with an outstanding nominal value of EUR 674 million (FROB 2017a).

On June 7, Santander submitted its binding offer to the FROB on the condition that shareholders and AT1 holders incurred full losses and agreed to purchase newly converted Tier 2 shares for a token value of EUR 1 (in total, AT1 and Tier 2 represented EUR 2 billion in junior bonds) (SRB 2017a). With no private or supervisory alternatives, the SRB accepted the bid, but required that Santander commit to restoring Popular to solvency—requiring a capital increase of EUR 7 billion—so that Santander would not breach its own regulatory capital requirements and endanger its banking authorization (Monzón 2017; SRB 2017a).

Under the SRB's orders, the FROB wrote shareholders and AT1 holders down to zero, while Tier 2 was converted and effectively written down to zero given that the newly converted shares were purchased for a grand total of EUR 1 (see Figure 8).

**Figure 8: Popular's Pro Forma Balance Sheets (EUR billions)**

**Pre-resolution**

as of June 6, 2017

Assets		Liabilities + Equity	
Cash	1	Deposits	105
Securities	20	Senior Debt	12
Loans	71 83	Subordinated Debt	2
Other Assets	25	Total Liabilities	119
		Equity	-2 10
<b>Total</b>	<b>117 129</b>	<b>Total</b>	<b>117 129</b>

Note: i) Loans were written down from EUR 83 billion to EUR 71 billion; ii) Negative equity capital of EUR 2 billion implied after the asset writedowns

**Post-resolution**

as of June 7, 2017

Assets		Liabilities + Equity	
Cash	1	Deposits	105
Securities	20	Senior Debt	12
Loans	71	Subordinated Debt	0 2
Other Assets	25	Total Liabilities	117 119
		Equity	0 -2
<b>Total</b>	<b>117</b>	<b>Total</b>	<b>117 117</b>

Note: i) Subordinated Debt of EUR 2 billion was written down

Note: Pre-resolution balance sheet assumes equity's market value reported as of March 31, 2017, and subsequent loss to recorded book value of equity, as well as best-case scenario loan losses estimated in Deloitte's third valuation, published in June 2018. Post-resolution liabilities reflect a EUR 4.2 billion write-down and conversion of capital instruments. Popular had EUR 8.6 billion in intercompany debt (recorded as an asset), which was purchased by Santander.

Sources: Deloitte 2018b; PwC 2017, PDF 47.

**9. Treatment of Creditors and Equity Holders: Shareholders and junior bondholders lost the entire value of their investments; Santander later tried to reward some former retail shareholders with perpetual bonds, but the European court struck down that plan.**

All of Popular's existing shares (common equity Tier 1) were written down. The AT1 instruments were written down while Tier 2 instruments were converted into new shares, which were sold for EUR 1 (see Figure 9) (SRB 2017g). Senior debt and depositors were

untouched, and no public funds were used. Popular's resolution marked the first time AT1 holders incurred a loss.

### **Common Equity Tier 1 Capital**

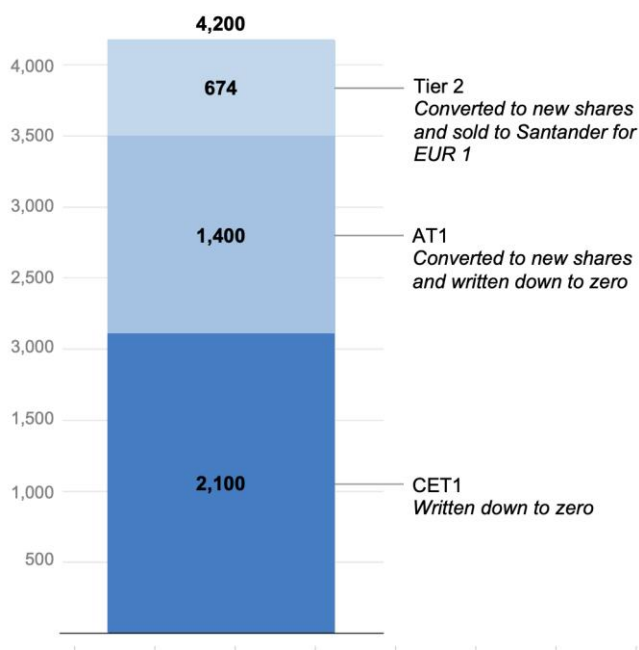
The SRB canceled 100% of Popular's common shares, which had a book value of EUR 2.1 billion and a market value of EUR 1.3 billion as of December 31, 2016 (Deloitte 2018a; SRB 2017a).

### **Additional Tier 1 Instruments**

Exercising its powers under the SRMR, the SRB ordered the entire principal amount of Popular's AT1 instruments, previously of a nominal value of EUR 1.4 billion, to be converted into newly issued shares, all of the same class and series (European Parliament 2014b; SRB 2017a). The FROB, exercising its authority under Law 11/2015, set a nominal value for these new shares, though these were immediately written down to zero and 100% canceled (Banco de España 2015; SRB 2017a).

### **Tier 2 Instruments**

Popular's Tier 2 instruments had a fixed maturity date, and Popular could not skip coupon payments (Smith 2017). The SRB ordered the conversion of the entire principal amount of Popular's Tier 2 bonds, previously of a nominal value of EUR 674 million, into newly issued shares, all of the same class and series, again at a nominal amount determined by the FROB; in practice, however, this was determined by the bids received. For Popular, the newly converted shares were transferred to Santander upon the execution of the sale for the sum of EUR 1 (SRB 2017a).

**Figure 9: Summary of Popular’s Regulatory Capital Write-Down (EUR millions)**

Source: Author’s analysis.

In determining the appropriate resolution process, the resolution authority must follow the “no creditor worse off than in liquidation” test, in which none of the firm’s creditors would be worse off in resolution than in normal insolvency proceedings (Gleeson and Guynn 2016, 191–92; SRB 2017e). The BRRD requires the resolution authority to write down regulatory capital as soon as it determines that the institution is nonviable (that is, as soon as the FOLTF assessment has been made) (European Parliament 2014a).

Following resolution, Article 20(16) requires the SRB to commission an independent ex post valuation to confirm creditors are no worse off—the third valuation that the BRRD requires (European Parliament 2014b; World Bank 2017). Essentially, this consists of a comparison between the treatment that shareholders and creditors were afforded through resolution (including the write-down of capital instruments) and the treatment they were likely to receive under normal insolvency proceedings. If the SRB—or a European court, in the case of post-resolution appeal—deem that shareholders and creditors were worse off under resolution, they should be compensated (Gleeson and Guynn 2016).

In accordance with the “right to be heard,” as prescribed in the Charter of Fundamental Rights of the European Union, the SRB allows affected shareholders and creditors to make an appeal to the SRB’s Appeals Board (CJEU 2022b; SRB 2020a). This process allowed Popular’s shareholders and creditors to make the case that the SRB’s resolution process left them worse off than an insolvency proceeding would have and that compensation was therefore owed to them in accordance with the SRMR (European Parliament 2014b; SRB 2020a). The SRB reviewed these appeals and determined again that the treatment of

shareholders and creditors would have been no better under normal bank insolvency proceedings, and, on March 17, 2020, made a final decision that no compensation was owed to them (SRB 2020a).

Some investors who participated in Popular's 2016 share offering sued for restitution, saying that the bank's 2016 public reporting had misled them about its financial health. The European Court of Justice, the European Union's highest court, determined in May 2022 that these shareholders were not entitled to compensation for losses suffered as a result of the SRB's resolution (Reuters 2022). The Court noted that, "while there is a clear general interest in ensuring strong and consistent investor protection throughout the European Union, that interest cannot in any event be regarded as overriding the general interest in ensuring the stability of the financial system" (CJEU 2022a).

### **Loyalty Bonds**

Santander issued EUR 981 million of contingently amortizable perpetual bonds ("loyalty bonds") to small retail (that is, noninstitutional) private shareholders (not subordinated bondholders) of Popular who participated in a EUR 2.5 billion capital increase in May–June 2016 and were affected by the resolution (Santander 2017a; Santander 2018). In 2017, news reports revealed that Popular issued unreported loans to clients that were used to buy the shares. This, together with the discovery of a "bad loan" portfolio that was under-provisioned by EUR 600 million, required a partial restatement of Popular's 2016 financials and contributed to then-CEO Pedro Larena's resignation on April 3, 2017 (Mount 2017; SRB 2017a). Acceptance of the bonds demanded a commitment to waive the right to pursue legal action against Santander and Popular. The securities had a nominal annual coupon rate of 1%, paid quarterly, at EUR 100 par value, redeemable after seven years (Santander 2017a).<sup>12</sup> The offer was accepted by 78% of eligible investors (Santander 2018).

In 2022, the European Court of Justice ruled that Banco Popular shareholders that took part in the 2016 capital increase were not entitled to any compensation on losses suffered as a part of the bank's restructuring (Reuters 2022).

### **10. Treatment of Clients: Santander assumed all of Popular's obligations and migrated all of its contracts.**

In the course of Popular's integration with Santander, Santander assumed Popular's obligations and migrated 15.2 million contracts (Santander 2019). In the 2016 pre-resolution plan, the SRB analyzed Popular's client relationships; though confidential, this

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<sup>12</sup> More precisely, the nominal amount paid to a shareholder was equivalent to the retail customer's investment made between May–June 2016. Holders of subordinated bonds were paid the difference between the amount invested less the interest received from them (Santander 2017a). To qualify, the invested amounts must have remained with Santander or Popular at the time of resolution (Santander 2017a). Investments up to EUR 100,000 received the full amount. Santander paid 75% of the total on investments between EUR 100,000 and EUR 500,000, and 50% on investments between EUR 500,000 and EUR 1 million (Santander 2017a). Santander estimated 99% of Popular clients and employees who participated in the share raise invested less than EUR 100,000 (Santander 2017a).



analysis partly informed the choice of resolution by sale of business (European Parliament 2014a; SRB 2016).

In contrast to a bank insolvency proceeding, the BRRD states that resolution is not a reason for counterparties not to fulfill their obligations, and it foresees the suspension of contractual termination rights (World Bank 2017). The BRRD allows the resolution authority to apply a temporary “resolution stay” and to request a longer stay from the court (European Parliament 2014a; World Bank 2017).

### **11. Treatment of Assets: FROB facilitated the direct transfer of assets to Santander without the use of an intermediary vehicle.**

Once the FROB initiated the sale and Santander signed the deal on the morning of June 7, the FROB was responsible for transferring all of Popular’s assets, rights, and liabilities to Santander (SRB 2017g; SRB 2017e).

In August 2017, Banco Popular reached an agreement to form a new company, which is 51% owned by Blackstone (a global real estate investment firm) and 49% by Banco Popular. Banco Popular transferred a portfolio of real estate properties and loans worth EUR 30 billion and 100% of its ownership in Aliseda (real estate management firm) to this new company. The Spanish assets of the company were valued at EUR 10 billion. Blackstone took over the management of the new company, and this transaction improved Santander’s CET1 capital ratio by 12 bps (Blackstone 2017).

Following the resolution, Santander sold Banco Popular Portugal to Santander’s own subsidiary in Portugal, Santander Totta, in a separate intragroup transaction (Santander 2018).

This transfer did not require the use of an intermediary, such as an asset management vehicle. The SRB determined that the sale-of-business process could be immediate, whereas a bridge institution or asset management vehicle would have been more appropriate for a resolution in which the sale process was less immediate (SRB 2017a).

### **12. Treatment of Board and Management: Popular replaced its board of directors on June 7.**

On June 7, Popular informed Spain’s securities regulator, the CNMV, that it was replacing its entire board of directors (CNMV 2017b; PwC 2017, PDF 16).

The BRRD establishes that management and senior management of the entity under resolution must be replaced, except where maintaining them in office is considered necessary to achieve the objectives of resolution (European Parliament 2014a; World Bank 2017). The BRRD also requires management of the institution under resolution to provide all necessary assistance for the achievement of the resolution objectives. The FROB was entitled to remove Popular’s management and assign a special manager, but it did not do so in the sale-of-business resolution (European Parliament 2014b; 2014a; SRB 2017a).

**13. Cross-border Cooperation: SRB collaborated with the Spanish national resolution authority (FROB) and took Portugal's interests into account in Popular's resolution plan.**

Banks headquartered in the EU with significant branches or subsidiaries in another member state require the convening of a "Resolution College" to agree upon resolution plans. The College convenes the SRB (as resolution authority), the relevant national resolution authority from each member state, the relevant supervisor (the ECB or the National Competent Authority for cross-border groups), the member states' relevant deposit insurance administrators, and the EBA (as a nonvoting, mediating member) (SRB 2019). In the case of Popular, which required no cross-border coordination between member states, the SRB's executive session performed the coordinating role between Spanish authorities and European authorities.

The ECB is the supervisory authority for significant banks falling under the SRB's remit, so the SRB and ECB readily cooperate and exchange information (SRB 2019; SRB n.d.).

Article 58 of Spanish Law 11/2015 outlines the FROB's responsibilities to cooperate with international authorities, including the SRB, ECB, and EBA, and to execute a resolution scheme these authorities decide upon for any Spanish bank entering resolution (Banco de España 2015).

Popular's main foreign subsidiary was Banco Popular Portugal, which had EUR 9.1 billion in assets (4.7% of Popular's banking assets in 2015), and therefore had a common resolution framework with the Spanish parent company (SRB 2016). Popular's activity in Portugal was highly concentrated in SME lending, and the SRB took this into account when deciding to wind down Popular by selling its business to Santander (SRB 2016; SRB 2017a).

The FROB, acting under the SRB's orders, wrote down Popular's shareholders and creditors irrespective of their domicile.

**14. Other Conditions: The SRB did not restrict the behavior of Popular or Santander.**

The SRB did not place any additional restrictions on either Popular or Santander.

**15. Duration: The entire resolution of Popular took one day to initiate and complete.**

The final execution of Popular's resolution took one day to initiate and complete. Popular informed the ECB it had run out of liquidity at 3:30 pm., and by 9:30 pm that evening, the ECB had confirmed its FOLTF assessment, which triggered the SRB's resolution plan (Mesnard, Margerit, and Magnus 2017). Under the SRMR, the resolution process may take as long as 24 hours (see Figure 6 for a stylized process flow of the SRB's resolution decisions). According to the financial press reporting on creditor litigation against the SRB, the EC took 77 minutes to approve the SRB's resolution plan (Laidlaw 2018). By 6:00 am the following day, Santander was informed that Spanish authorities had accepted its EUR 1 bid, and Santander signed the deal an hour later. Popular reopened for business later that morning (Mesnard, Margerit, and Magnus 2017).

The BRRD/SRMR resolution process is designed to be quick, with a rapid provisional valuation and the entire resolution taking place over a weekend. Thus, it is interesting, and for many observers, remarkable, that Popular's resolution took place on a Tuesday and the firm reopened as a subsidiary of Santander on Wednesday.

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## Appendixes

### Appendix A: Overview of Banco Popular Resolution Investor Complaints, 2018–2022

This appendix summarizes the arguments shared by many of the claims against the Single Resolution Board (SRB) in the case of Banco Popular Español, S.A.'s resolution; thus, it is not meant as an exhaustive list but a representation of the most common complaints. The European Court of Justice dismissed all of these complaints in 2022, finding no error in the SRB's assessment that Popular met the conditions for resolution and affirming that the Bank Recovery and Resolution Directive (BRRD) anticipates a degree of uncertainty in provisional valuations (CJEU 2022b). Ultimately, the court affirmed the delegation of power from the European Commission (EC) and European Council to the SRB and stated that the write-down of capital instruments (meaning additional Tier 1 [AT1] and Tier 2) did not constitute "an excessive and intolerable interference" with the creditors' right to property; rather, it was "a justified and proportionate restriction" on this right (CJEU 2022b). The court also stated that a creditor's "right to be heard" (under the "no creditor worse off than in liquidation," or NCWOL, principle) was subject to limitations when the timing or substance of such a hearing would interfere with financial stability (CJEU 2022b).

#### *Valuation Process*

- (1) First, plaintiffs argued that the value of Popular pre-resolution was positive and that the SRB did not take into account its market capitalization of EUR 1.3 billion immediately before the resolution decision (Laidlaw 2018). In fact, the auditor, Deloitte Réviseurs d'Entreprises, acknowledged Popular's market capitalization of EUR 1.3 billion but did not rely on this for its valuation given the volatile pricing of Popular's shares (SRB 2018).
- (2) Second, plaintiffs argued that the SRB and/or the EC were unlawful in making the resolution decision based on Deloitte's provisional valuation. Many plaintiffs criticized the 12-day timeline Deloitte was given to value a highly complex, international bank, which would normally take six weeks (Gore 2019; Laidlaw 2018). Deloitte admitted that it did not have access to some information critical to an accurate valuation and regarded its own report as "highly uncertain" (Deloitte 2017). Moreover, given the rapidly deteriorating situation at Popular, the financial press reported that the EC took 77 minutes to review the SRB's resolution plan and offer its endorsement (Laidlaw 2018). The BRRD envisions a rapid provisional valuation and a quick resolution process—historically, in the 50 hours between market close in the United States and market open in Tokyo—with approval by the EC taking no more than 24 hours.
- (3) Plaintiffs also doubted the validity of the valuation and approval process altogether, pointing to Popular's own attempts to privately raise capital and find a buyer (Laidlaw 2018). Deutsche Bank was marketing the firm privately in the weeks leading up to, and simultaneously with, the consortium of investment bankers organized by the SRB and Spain's Fund for Orderly Bank Restructuring (Fondo de



Reestructuración Ordenada Bancaria, or FROB) (Hale, Smith, and Arnold 2017).

*Lack of Transparency and Accountability*

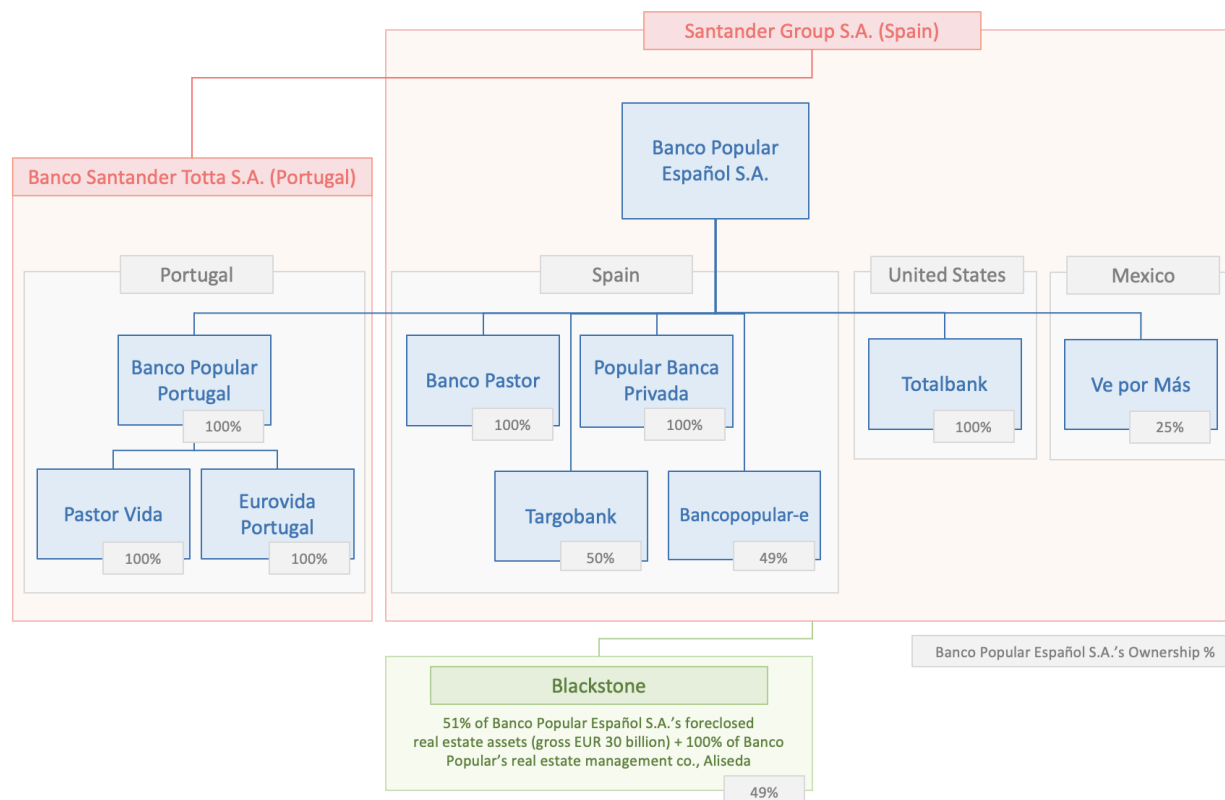
- (4) Fourth, some lawsuits claimed that the SRB proceeded in an unlawful manner and without proper governance. Following the provisional valuation and the resolution decision, the SRB is required to commission a proper valuation of the firm to determine whether compensation is owed to the bailed-in parties. Some plaintiffs criticized the SRB for hiring the original auditor, Deloitte, to also conduct the third valuation, upon which the compensation decision would be made (Laidlaw 2018). When the SRB published the valuation reports, they were heavily redacted, leading to criticisms of a lack of transparency (Laidlaw 2018). The SRB countered that it is bound to confidentiality agreements under the BRRD (SRB 2018).

*Resolution Unnecessary*

- (5) Finally, some creditors argued that Popular's resolution may not have been necessary had the bank accessed the full amount of ELA it requested (Gore 2019; Hale, Smith, and Arnold 2017). Popular posted EUR 40 billion in collateral, which, under ELA rules, should have entitled it to EUR 10 billion in ELA, though Popular received only EUR 3.6 billion, and this proved insufficient to meet depositor withdrawals on June 6. The ECB approved Popular's full request, but Spanish regulators did not (Buck, Arnold, and Sanderson 2017; Buck and Brunsden 2017).

## Appendix B: Banco Popular’s Corporate Structure and SRB’s Resolution Process

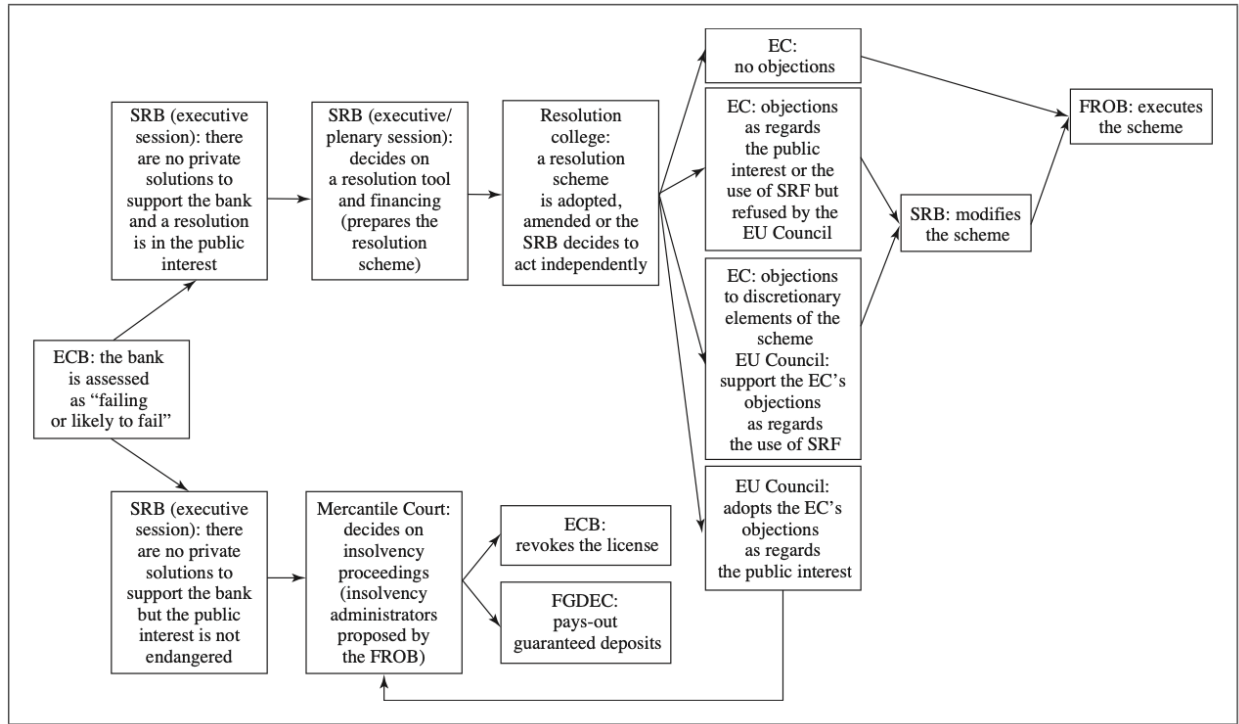
**Figure 10: Structure of Banco Popular Español, S.A.**



Note: Banco Santander Totta S.A. purchased Banco Popular Portugal in a separate intragroup transaction. Banco Santander Totta was renamed Banco Santander (Portugal) in 2018. The Banco Popular business line of Santander Group S.A. retained 49% ownership of the separate vehicle of real estate assets co-owned with Blackstone. Totalbank was sold to a Chilean bank in December 2017.

Source: Author's interpretation of SRB 2016.

**Figure 11: The SRB’s Decision Flow under the Single Resolution Mechanism**



Source: *Kozińska 2018.*

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