

EMEA DC STATEMENT 25 AUGUST 2017

The EMEA DC met on Wednesday 23 August 2017 to continue discussions as to whether any rights retained by holders of Tier 2 subordinated debt instruments (the **Tier 2 Notes**) issued or guaranteed by Banco Popular Español SA (**Banco Popular**) in connection with the bail-in of such Tier 2 Notes (the **Retained Rights**) should form part of the Asset Package and be included in the Auction for subordinated 2014 Transactions. The EMEA DC agreed to publish the following statement. Terms used but not defined herein have the meaning specified in the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) or the ISDA Credit Derivatives Determinations Committee Rules (January 20, 2016 Version) (the **DC Rules**), as applicable.

The EMEA DC was advised that under Article 15 of the SRM Regulation¹, the Single Resolution Board (the **SRB**) and the national resolution authorities (in this case, the Fondo de Reestructuración Ordenada Bancaria (the **FROB**)) are required to ensure that any resolution actions are in accordance with the principle that no creditor shall incur greater losses than would have been incurred if the relevant entity had been wound up under normal insolvency proceedings. Article 20.16 of the SRM Regulation requires the SRB to ensure that a valuation is carried out by an independent person as soon as possible after the resolution actions have been effected (the **Article 20.16 Valuation**). The Article 20.16 Valuation is distinct from the provisional valuation which has already been carried out with respect to Banco Popular. If it is determined that shareholders and creditors would have received better treatment under normal insolvency proceedings, then they should be entitled to the payment of the difference where required under the SRM Regulation. That difference, if any, should be paid by the European Single Resolution Fund under Article 76.1(e) of the SRM Regulation (the **Article 76 Compensation Right**). In other words, if the Article 20.16 Valuation in respect of Banco Popular determines that there is a difference between the treatment that the holders of the Tier 2 Notes would have received if Banco Popular had entered normal insolvency proceedings on June 7, 2017 and the actual treatment they have received in the resolution of Banco Popular, holders of the Tier 2 Notes will, pursuant to their Article 76 Compensation Right, have a claim against the European Single Resolution Fund for the difference.

The EMEA DC is of the view that any such Article 76 Compensation Right constitutes an Asset (as defined in Section 8.7 of the 2014 Definitions) that comprises the sole Asset to be included in the Asset Package. Accordingly, to the extent holders of the Tier 2 Notes are entitled to a compensation payment pursuant to their Article 76 Compensation Right, then the EMEA DC is of the view that any such compensation payment would be representative of the value of the Asset Package. For example, if the Article 20.16 Valuation determines that holders of the Tier 2 Notes are entitled to no compensation payment, then the value of the Asset Package would be deemed to be zero. If, however, holders of the Tier 2 Notes received a compensation payment pursuant to their Article 76 Compensation Right, then the Asset Package would consist of such payment.

The EMEA DC considered the possibility of holding an Auction in which the Article 76 Compensation Right would be the subject matter of such Auction. However, the EMEA DC decided against this approach because of concerns regarding the feasibility of transferring these rights, the lack of any market liquidity of trading in these rights and the risk that these factors could lead to an unreliable Auction Final Price. Accordingly, the EMEA DC concluded that the Article 76 Compensation Right would be a Non-Financial Instrument (as defined in Section 8.14 of the 2014 Definitions). The EMEA DC noted that similar concerns should not arise with respect to bail-ins involving the issuance of certificates of entitlement to bondholders of bailed in bonds² as such certificates should be capable of being included in an Auction process.

As far as the EMEA DC is aware, the Article 20.16 Valuation has not yet been carried out. Accordingly, it is not possible at this stage to determine whether the holders of the Tier 2 Notes will in fact be entitled to receive any compensation pursuant to the Article 76 Compensation Right.

¹ Regulation 806/2014 of the European Parliament and of the Council of 15 July 2014, establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

² By way of example, see: http://www.bankofengland.co.uk/financialstability/Pages/role/risk_reduction/srr/carryingbail.aspx

It is a requirement under the SRM Regulation that the Article 20.16 Valuation be completed *as soon as possible* after the resolution actions have been effected (which in this case, occurred on 7 June 2017) although there is no definitive long-stop date by which the valuation must be completed and published. Accordingly, the Article 20.16 Valuation should be published in the near future. Considering in particular that settlement of a Governmental Intervention Credit Event does not require Deliverable Obligations (specifically, any Prior Deliverable Obligation) to be in existence, the EMEA DC has decided to wait until such publication before making a determination in respect of the value of the Asset Package for purposes of the subordinated 2014 Transactions. The EMEA DC noted that the Article 20.16 Valuation might be subject to legal challenges. However, the EMEA DC noted that the need to reflect the Retained Rights in a reasonable manner is counterbalanced by the need to avoid an overly delayed settlement of the subordinated 2014 Transactions. Accordingly, the EMEA DC does not expect to wait beyond the publication of the Article 20.16 Valuation before making a determination of the value of the Asset Package. In the meantime, however, the EMEA DC will continue to monitor any material market developments in case of any supervening events which might lead to a reconsideration of the issues or a change in approach (which would include any significant delays in the publication of the Article 20.16 Valuation). In any event, the EMEA DC has agreed to reconvene in a month's time to assess the situation further.

With respect to Updated 2003 Transactions (senior and subordinated), the EMEA DC expects an Auction to be held during the course of September. Further details will be published on the Banco Popular DC webpage in due course: <http://dc.isda.org/cds/banco-popular-espanol-sa/>