

DECISION OF THE SINGLE RESOLUTION BOARD

of 27 February 2022

concerning the exercise of powers under the national law transposing Article 33a of Directive 2014/59/EU in respect of Sberbank Europe AG

(SRB/EES/2022/16)

THE SINGLE RESOLUTION BOARD,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010¹, and in particular Articles 5 and 7 (2) thereof,

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and EU No 648/2012, of the European Parliament and of the Council², and in particular Article 33a thereof,

Having regard to the Austrian Act on the Recovery and Resolution of Banks (*Bundesgesetz über die Sanierung und Abwicklung von Banken*; "**BaSAG**"), and in particular Article 47a thereof,

Whereas:

1. The facts and the relevant national law

1.1 The Institution

- (1) Sberbank Europe is a universal banking group operating in eight different markets in Central and Eastern Europe with Sberbank Europe AG (the parent institution) established in Austria and subsidiaries in Slovenia, Croatia, the Czech Republic, Hungary, Bosnia and Herzegovina, and Serbia, as well as a branch in Germany (altogether the "**Group**"). The Group has 187 branches, approximately 773 000 customers and 3 800 employees. It operates in the market segments of retail banking (mortgage and consumer loans, deposits and account services), SMEs (loans and

¹ OJ L 225, 30.7.2014, p.1.

² Commission Delegated Regulation (EU) 2016/778 of 2 February 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary ex post contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines, OJ L 131, 20.5.2016, p. 41.

account services to SME companies across CEE) and corporate (loans and global market services to large corporates). The Group had total assets of EUR 12 942 million at the end of 2020.

- (2) Sberbank Europe AG, LEI 529900IZ8TASAYR3A694, (the “**Institution**”) is the parent entity of the Group. The Institution is 100% owned by Sberbank of Russia, Russia Federation’s largest bank. The Institution had total assets of EUR [...] by year-end 2021, one branch and approximately 65 000 customers. It provides retail banking services, lending to SMEs and corporates as well as global market services to large corporates.

1.2 The difficulties of the Institution and the attempts to address those difficulties

- (3) Following mounting geopolitical tensions between the Russian Federation and Ukraine since November 2021, which resulted in the Russian invasion into Ukraine on 24 February 2022, [...].
- (4) [...].
- (5) As of 24 February 2022, the Institution suffered a deteriorating liquidity situation. In particular, [...] a wave of significant deposit withdrawal in the Institution and its subsidiaries. [...] With regard to the latter, the Institution was informed of the decision of the Central Bank of the Russian Federation of 25 February 2022, prohibiting to transfer any foreign currency denominated funds in favor of/to any (banking) subsidiaries of SBRF located in any foreign jurisdiction/unions of jurisdictions whose national authorities introduced sanctions against Russian legal persons and/or assets and/or officials thereof. Also in this light, despite the measures taken, the counterbalancing capacity of the Institution continued to deteriorate.
- (6) Overall, given the increased liquidity outflows that the Institution is facing, and which are expected to continue, the lack of plausible additional liquidity generating measures [...], the Institution is expected to no longer be able to cover its liabilities as they fall due. The readily available counterbalancing capacity is deemed insufficient to cover outflows [...].
- (7) In view of these considerations, the European Central Bank (the “**ECB**”) concluded on 27 February 2022 that the Institution is deemed to be failing or likely to fail in accordance with Article 18(1)(a) and 18(4)(c) of the Regulation (EU) 806/2014, since there are objective elements to support a determination that the Institution will, in the near future, be unable to pay its debts or other liabilities as they fall due.

2. Valuation

- (8) Due to the sharp deterioration of the Institution’s liquidity position over the last days the Single Resolution Board (“ the **Board**”) needed to conduct an urgent provisional valuation on the basis of available public and supervisory information which has been performed by the Board in line with Article 20 of Regulation 806/2014 for the purpose of informing the determination of whether the Institution meets the conditions for resolution or the conditions for the write down or conversion of capital instruments pursuant to Article 20(5)(a) of Regulation 806/2014 (“Valuation 1”). In particular, the report should support the determination of whether the Institution is failing or likely to fail pursuant to Article 18(1)(a) of Regulation 806/2014.
- (9) The Valuation 1 report does not indicate that the Institution is insolvent. However, it assesses that there are objective elements to support a determination that the Institution, in the near future, will be unable to pay its liabilities as they fall due in the meaning of Article 18(4)(c) of Regulation

806/2014. The SRB concurs with the failing or likely to fail (“**FOLTF**”) assessment performed by the ECB. The SRB concludes that the Institution is failing or likely to fail in the meaning of Article 18(1)(a) of Regulation 806/2014.

3. Procedure

- (10) On 27 February 2022 at 10:11 CET, the ECB communicated to the Board its draft FOLTF assessment of the Institution, for the purpose of consulting the Board on this matter in accordance with Article 18(1)(second subparagraph) of Regulation 806/2014.
- (11) On 27 February 2022 at 14:11 CET, the Board provided the ECB with its formal response on the above draft FOLTF assessment.
- (12) On 27 February 2022, the ECB has reached the conclusion that the Institution is failing or likely to fail. On the same date at 16:24 CET, the ECB communicated its final FOLTF assessment to the Board.
- (13) On 27 February 2022, the SRB has consulted the ECB on the exercise of the powers under Article 33a of Directive 2014/59/EU.

4. Legal and economic assessment

4.1 Competence of the Single Resolution Board

- (14) In light of Articles 5(1) and 7(2) of Regulation 806/2014, the Board shall be considered to be the relevant resolution authority to perform the tasks under the national law transposing Article 33a of Directive 2014/59/EU, with respect to the institutions and entities under the Board's direct responsibility. This is due to the close link of the above powers with the assessment whether the conditions for resolution action are met and whether and how to effectively apply any resolution action.
- (15) The Institution is a credit institution established in Austria, a participating Member State within the meaning of Article 4(1) of Regulation 806/2014, and is part of a group which is considered to be significant, in accordance with Article 6(4) of Regulation (EU) No 1024/2013. Accordingly, the Board is responsible for adopting all decisions relating to resolution for the Institution, pursuant to Article 7(2)(a) of Regulation 806/2014, including the decision whether to exercise the powers under Article 33a of the Directive 2014/59/EU.

4.2 Conditions laid down in the national law transposing Article 33a of Directive (EU) 2014/59

- (16) Pursuant to Article 33a(1) of Directive 2014/59/EU, as transposed in Article 47a paragraph 1 of the BaSAG, the resolution authority, after consulting the competent authority, has the power to suspend any payment or delivery obligations from any contract to which an institution is a party, where all of the following conditions are met:
 - a) it has been determined that the institution is failing or likely to fail;
 - b) there is no immediately available alternative private-sector measure pursuant to Article 49 paragraph 1 no 2 BaSAG which would prevent the failure of the institution;

- c) the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the institution pursuant to Article 1 paragraph 1 nos 2 to 4 of the BaSAG; and
 - d) the exercise of the power to suspend is necessary:
 - (i) either to reach the determination whether resolution is necessary in the public interest; or
 - (ii) to choose the appropriate resolution actions or to ensure the effective application of one or more resolution tools.
- (17) Pursuant to Article 33a(10) of Directive 2014/59/EU, as transposed under national law, when the resolution authority exercises the above power, the resolution authority is also able, for the duration of that suspension, to exercise the power to: (a) restrict secured creditors of that institution or entity from enforcing security interests in relation to any of the assets of that institution or entity for the same duration, in which case Article 70(2), (3) and (4) of Directive 2014/59/EU shall apply; and (b) suspend the termination rights of any party to a contract with that institution or entity for the same duration, in which case Article 71(2) to (8) of Directive 2014/59/EU shall apply.

4.2.1 The Institution's failure or likelihood of failure

- (18) On 27 February 2022, pursuant to Article 18(1) (second subparagraph) of Regulation 806/2014, after consulting the Board, the ECB has assessed that the Institution is deemed to be failing or likely to fail, in accordance with Article 18(1)(a) and 18(4)(c) of Regulation 806/2014.
- (19) In particular, the ECB considered that, the intensification of the geopolitical tensions between the Russian Federation and Ukraine [...] the Institution which suffered a deteriorating liquidity position. The consequences [...] have been threefold: i) a reputational impact which has triggered a significant wave of deposit withdrawals in the Institution; ii) the fact that the Institution had to provide support to its subsidiaries [...]; and iii) the loss of access to USD correspondent banking and the loss of access to USD payments. Moreover, [...], the impact on the behaviour of depositors and potential market counterparts of the Institution is being fully manifested without any indication of potential reversal.
- (20) Since 23 February 2022, SBAG sustained EUR [...] net deposit outflows, which corresponds to [...] % of its total deposit base as of 23 February 2022. In particular, as of 25 February, retail deposits were reduced from EUR 1 [...] to EUR [...]. The LCR decreased from [...] % as at 23 February 2022 to [...] % as at 25 February 2022, as none of the above-mentioned actions were successfully in counterbalancing said the above mentioned outflows. In case the liquidity position of the bank continues to exhibit the same trend as the one displayed in the past few days, the LCR is expected to fall close to [...].
- (21) Several of the subsidiaries of the Institution have experienced acute liquidity outflows in the past days, while despite the decentralised funding structure of the Institution, subsidiaries are dependent on the Institution for the provision of additional liquidity in case of need. [...].
- (22) Given the deteriorating environment the Institution is operating in, including [...] and its limited access to any form of market funding, the Institution should at the very least maintain a sufficient

- counterbalancing capacity to cover [...]. The current readily available counterbalancing capacity therefore is insufficient to cover outflows [...].
- (23) The Institution has put in place several measures to correct the liquidity position, [...]. Nevertheless, these measures have not been sufficient to reverse the deterioration of the liquidity position of the Institution. The recovery plan of the Institution does not include any other options, which would be suitable under the current circumstances.
- (24) There are no further available supervisory or early intervention measures that could restore the liquidity position of the Institution in an immediate way and allow it to ensure sufficient time in order to implement measures. The available measures to the ECB as competent authority under the national transposition of Article 104 of Directive 2013/36/EU (CRD) and Articles 27-29 of Directive 2014/59/EU or under Article 16 of Regulation (EU) No 1024/2013 have been explored but they cannot ensure that the Institution will be in a position to meet its liabilities and other debt as they fall due, given the extent and pace of the liquidity deterioration observed.
- (25) In view of these considerations, the ECB concluded that the Institution is deemed to be failing or likely to fail as there are objective elements to support a determination that the Institution will, in the near future, be unable to pay its debts or other liabilities as they fall due in accordance with Article 18(4)(c) of Regulation 806/2014.
- (26) The main findings of the Valuation Report relating to Article 18(4)(c) of Regulation 806/2014 can be summarized as follows.
- (27) Overall liquidity situation remained stable until 22 February 2021. The accelerated escalation of the geopolitical tensions between Russia and Ukraine at the beginning of the week starting on 21 February 2021 [...] has ultimately caused significant deposit withdrawals, [...]. Given the dependence of the subsidiaries on the SBAG for liquidity, the liquidity support to the subsidiaries contributed to the worsening of the liquidity position of the Institution.
- (28) In more detail, from 23 to 25 February 2022, due to significant outflows of deposits (more than EUR [...] at Group level and more than EUR [...] at AT individual level), the Counterbalancing Capacity (CBC) of the Group has been reduced to EUR circa [...] ([...] %) and to circa EUR [...] at individual level ([...] %), which in turn reduced its LCR to [...] % [...].
- (29) According to the bank's FOLTF notification, the LCR at consolidated group level stands at [...] %. According to ECB's assessment, with the current rate of outflows, bank's liquidity buffers are expected to be depleted in [...] and the LCR is expected to come to [...] %.
- (30) [...].
- (31) Moreover, according to the ECB, the current readily available counterbalancing capacity is deemed insufficient to cover [...]. Given the increased liquidity outflows that the Institution is facing which are expected to continue, the absence of any credible additional liquidity generating measures in the short term and the additional liquidity needs of the subsidiaries which the the Institution will be asked to cover, the Institution is likely to be unable to meet payments in the near future on its debts or other liabilities as they fall due.

(32) [...].

(33) The Institution admitted that it is FOLTF by submitting the FOLTF notification to the SRB.

(34) Following the ECB's assessment and taking into account the above elements of Valuation 1, the Board considers that the condition specified in Articles 18(1)(a) and 18(4)(c) of Regulation 806/2014 is met in respect of the Institution.

4.2.2 Absence of immediately available alternative private-sector measure

(35) There is no immediately available alternative private sector measure that would prevent the failure of the Institution. [...].

(36) In addition, there is no reasonable prospect that any supervisory action, including early intervention measures, could prevent the failure of the Institution. In its assessment, the ECB stated that the Institution has no longer available any options to reverse the liquidity outflows [...].

(37) At the same time, the exercise of the power to write down or convert the Institution's relevant capital instruments and eligible liabilities as referred in paragraph 7a in accordance with Article 21 of Regulation 806/2014 independently of any resolution action would not be able to prevent the failure of the Institution. In particular, this is due to the fact that the deterioration of the situation is a result of severe liquidity outflows.

(38) In view of the above considerations, it is concluded that there are no immediate available private sector measures which could prevent the failure of the Institution. Accordingly the condition set out in Article 33(1)(b) of Directive 2014/59/EU as transposed in the national law is satisfied in respect of the Institution.

4.2.3 Necessary to avoid further deterioration of the financial conditions of the entity

(39) As of 24 February 2022, the Institution suffered a deteriorating liquidity situation. Particularly, [...] a wave of deposit withdrawals in the Institution. The Institution tried to strengthen its liquidity position by [...] trying (but not succeeding) to obtain liquidity support from the Russian ultimate parent, SBRF. With regard to the latter, the Institution was informed of the decision of the Central Bank of the Russian Federation of 25 February 2022, prohibiting to transfer any foreign currency denominated funds in favor of/to any (banking) subsidiaries of SBRF located in any foreign jurisdiction/unions of jurisdictions whose national authorities introduced sanctions against Russian legal persons and/or assets and/or officials thereof. Also in this light, despite the measures taken, the counterbalancing capacity of the Institution continued to deteriorate.

In view of the above considerations, the exercise of the power to suspend certain obligations is deemed necessary to avoid further deterioration of the financial conditions of the entity.

4.2.4 Necessary to assess the public interest in resolution

(40) In light of the deteriorating financial conditions of the entity it is considered necessary to further assess the public interest in placing the institution under resolution including any interconnectedness among the entities of the Group.

- (41) Having regard to the timing and the above described circumstances, the exercise of the power to suspend certain obligations is deemed necessary in the above respect.

4.2.5 Conclusion

- (42) In view of the above considerations, it is concluded that there are objective elements leading to the conclusion that the power to suspend certain obligations is deemed necessary. Therefore, the SRB will also exercise the powers under Article 33a(10) of Directive 2014/59, as transposed under national law.

4.3 Scope of the power to suspend certain obligations

- (43) The scope of the power to suspend certain obligations of the entity shall be exercised having regard to the timing and other relevant circumstances. In particular, the power to suspend certain obligations of the entity shall apply to all payment and delivery obligations from contracts to which the entity is a party (including, for the sake of clarity, eligible deposits according to the definition in point (4) of Article 2(1) of Directive 2014/49/EU (as transposed into Article 7 paragraph 1 no 4 of the Austrian Deposit Guarantee Schemes and Investor Compensation Act (*Einlagensicherungs- und Anlegerentschädigungsgesetz*; "ESAEG"), especially to covered deposits according to the definition in point (5) of Article 2(1) of Directive 2014/49/EU (as transposed into Article 7 paragraph 1 no 5 of the ESAEG) held by natural persons and micro, small and medium-sized enterprises) but except for the express exceptions set out in recital 29 below, and the daily allowance referred to in Section 4.4 below
- (44) The power to suspend certain obligations shall not apply to payment or delivery obligations to the following:
- (a) systems and operators of systems designated in accordance with Directive 98/26/EC;
 - (b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and thirdcountry CCPs recognised by ESMA pursuant to Article 25 of that Regulation;
 - (c) central banks.
- (45) In addition, the appropriateness of extending the suspension to obligations beyond the above described obligations under par. 28 has been carefully assessed having regard to the timing and other relevant circumstances. In particular, taking into account that the deposits constitute in the current point of time the primary source of outflows for the entity, it has been considered appropriate to extend the suspension to eligible deposits according to the definition in point (4) of Article 2(1) of Directive 2014/49/EU, including the covered deposits held by natural persons and micro, small and medium-sized enterprises.

4.4 Determination of daily allowance

- (46) In line with Article 30 and Article 31 of Regulation 806/2014, the Board cooperates with the FMA in determining the amount of daily withdrawal to which depositors should have access pursuant to the national law transposing Article 33a of Directive (EU) 2014/59/EU.

- (47) In particular, to appropriately take into account the timing and the particular circumstances of the Institution, the FMA assesses what would be the appropriate amount of the daily allowance to which depositors should have access.

HAS ADOPTED THIS DECISION

Article 1
Exercise of power

The Finanzmarktaufsicht (Financial Market Authority) is instructed to:

- a) suspend all payment or delivery obligations pursuant to any contract to which Sberbank Europe AG is a party, including eligible deposits according to the definition in point (4) of Article 2(1) of Directive 2014/49/EU, as transposed into national law, with the exception of the obligations mentioned in the national law transposing Article 33a(2) of the Directive 2014/59/EU;
- b) restrict all secured creditors of Sberbank Europe AG from enforcing security interests in relation to any of the assets of that institution for the same duration, in which case the national provisions transposing Article 70(2), (3) and (4) of Directive 2014/59/EU shall apply; and
- c) suspend all the termination rights of any party to a contract with Sberbank Europe AG for the same duration, in which case the national provisions transposing Article 71(2) to (8) of Directive 2014/59/EU shall apply.

Article 2
Daily allowance

The Finanzmarktaufsicht (Financial Market Authority) shall define the exact amount of daily allowance to which depositors should have access pursuant to the national law transposing Article 33a(3) of Directive (EU) 2014/59/EU.

Article 3
Addressee of the Decision

1. This Decision is addressed to Finanzmarktaufsicht (Financial Market Authority), in its capacity as National Resolution Authority, within the meaning of Article 3(1)(3) of Regulation (EU) No 806/2014.
2. Pursuant to Article 29(1) of Regulation (EU) No 806/2014, Finanzmarktaufsicht (Financial Market Authority) shall implement this Decision in line with the national law, including by notifying Sberbank Europe AG and making all relevant publications for the powers under Article 1 hereof to be effected as provided in the national law transposing Article 33a(8) of Directive 2014/59/EU.

Article 4
Effects of the decision

1. This Decision takes effect on Monday 28 February 2022, at 00:00:01 CET.



2. The powers under Article 1 of this Decision shall apply until Tuesday, 1 March 2022, at 23:59:59 CET.

Done in Brussels, on 27 February 2022

For the Single Resolution Board

The Chair
Elke KÖNIG