

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 d.d.

SRB/EES/2022/17

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 1093/2010<sup>1</sup>, 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 Council<sup>2</sup>, and in particular Article 33a thereof,

Having regard to Article 105 of Croatian Bank Recovery Act,

Whereas:

## 1. The facts and the relevant national law

### 1.1 The Institution

- (1) Sberbank d.d., (the “**Institution**”) is a subsidiary within the Sberbank Europe AG (the “**Group**”), which has its headquarters in Austria. The Group has the following material subsidiaries, located in different jurisdictions (EU and third countries):
- a) Sberbank banka d.d. (Republic of Slovenia);
  - b) Sberbank d.d. (Republic of Croatia);
  - c) Sberbank Magyarország Zrt. (Hungary);

<sup>1</sup> OJ L 225, 30.7.2014, p.1.

<sup>2</sup> 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.

- d) Sberbank CZ, a.s. (The Czech Republic);
  - e) Sberbank BH d.d. (Bosnia Herzegovina Sarajevo);
  - f) Sberbank a.d. Banja Luka (Bosnia Herzegovina).
- (2) As at 31 December 2020, the Group's total assets amounted to EUR 12,942 billion. The Group has 187 branches, 773.000 customers and it operates into three main segments: large corporates & investment banking (corporate financing, trade finance, transaction banking, acquisition financing, real estate financing), small and medium enterprises (liquidity financing, investment financing, treasury and trade finance products, transaction business support) and retail banking (mortgage and consumer loans, savings and pension products, digital banking and deposit, current account products).
- (3) As at 31 December 2020, the Institution's total assets amounted to EUR [...] and had 31 branches in 22 cities. The Institution is a universal bank that provides a wide range of universal banking services such as loans, guarantees, deposits, leasing, payment and credit card services, selling insurance products on behalf of others, etc. The Institution is the 8<sup>th</sup> largest bank by share of total assets in the Croatian banking market. Between 2017 and 2020, loan share grew in SME, Corporate and Retail segments, however deposits decreased in the SME and Corporate segment, while retail deposits increased.

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

- (4) Following the increase of geopolitical tensions between Russia and Ukraine since November 2021 which resulted in the invasion of Russia into Ukraine on 24 February 2022, the European Union and the US imposed a set of sanctions [...].
- (5) [...].
- (6) Moreover, according to the ECB, the current readily available counterbalancing capacity is deemed insufficient to cover outflows over [...]. 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, the Institution is likely to be unable to meet payments in the near future on its debts or other liabilities as they fall due.
- (7) [...].
- (8) In view of these considerations, the ECB concluded 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 (EU) No 806/2014 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.

## 2. Valuation

- (9) 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 Single Resolution Board in line with Article 20 of Regulation (EU) No 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 (EU) No 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 (EU) No 806/2014.

- (10) The Valuation 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 (EU) No 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 (EU) No 806/2014.

### **3. Procedure**

- (11) 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 (EU) No 806/2014.
- (12) On 27 February 2022 at 14:11 CET, the Board provided the ECB with its formal response on the above draft FOLTF assessment.
- (13) On 27 February 2022, the ECB has reached the conclusion that the Institution is FOLTF. On the same date at 16:24 CET, the ECB communicated its final FOLTF assessment to the Board.
- (14) 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**

- (15) In light of Articles 5(1) and 7(2) of Regulation (EU) No 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.
- (16) The Institution is a credit institution established in the Republic of Croatia, a participating Member State within the meaning of Article 4(1) of Regulation (EU) No 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 (EU) No 806/2014, including the decision whether to exercise the power 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**

- (17) Pursuant to Article 33a(1) of Directive 2014/59/EU, as transposed in Article 105 paragraph 1 of the Act on Resolution of Credit Institutions and Investment Firms (Official Gazette No 146/20, hereinafter referred to as "the Act"), 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 is likely to fail;
  - b) there is no immediately available alternative private-sector measure 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; 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.
- (18) 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**

- (19) On 27 February 2022, pursuant to Article 18(1) (second subparagraph) of Regulation (EU) No 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 (EU) No 806/2014.
- (20) According to the ECB, from 7 February 2022 to 22 February 2022, the liquidity situation remained relatively stable. On 23 February 2022, the Institution's counterbalancing capacity amounted EUR [...]. The accelerated escalation of the geopolitical tensions between Russia and Ukraine and [...] has ultimately caused significant deposit withdrawals.
- (21) In more detail, from 21 to 25 February 2022, due to significant withdrawal of deposits the counterbalancing capacity of the Institution was reduced to EUR [...] (circa [...]), which sharply reduced its LCR to [...] % (below minimum regulatory LCR requirements -100%).
- (22) Besides, further withdrawals of deposits for a total amount of EUR [...] are expected on 28 February 2022, corresponding to [...] of the total deposits outstanding as at the end of 25 February 2022. Additionally, the Institution may face additional liquidity pressures [...].
- (23) Regarding the possibility to implement additional liquidity measures, the Institution's recovery plan does not include any other options, which would be suitable under the current circumstances.
- (24) [...]. 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, the Institution is likely to be unable to meet payments in the near future on its debts or other liabilities as they fall due. [...].

- (25) In view of these considerations, the ECB concluded that the Institution is deemed to be failing or likely to fail as there 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 (EU) No 806/2014.
- (26) The main findings of the Valuation Report relating to Article 18(4)(c) of Regulation (EU) No 806/2014 can be summarised as follows:
- From 7 February 2022 to 22 February 2022, the liquidity situation remained relatively stable. On 23 February 2022 the Institution's counterbalancing capacity amounted EUR [...].
  - The accelerated escalation of the geopolitical tensions between Russia and Ukraine [...] has ultimately caused significant deposit withdrawals.
  - In more detail, from 23 to 25 February 2022, due to significant withdrawal of deposits (circa EUR [...]), the counterbalancing capacity of the Institution was reduced to EUR [...] (circa [...] %), which sharply reduced its LCR to [...] % (below minimum regulatory LCR requirements - 100%-). It should be noted that one of the LCR's assumptions is that retail customers' deposit outflows are expected to range between [...]. However, as per the latest information received from the ECB the outflows are well above such rates in a shorter timeframe.
  - [...].
  - [...].
- (27) The Group admitted that the Institution is FOLTF by submitting the FOLTF notification to the SRB.
- (28) 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 the Regulation (EU) No 806/2014 is met in respect of the Institution.

#### **4.2.2 Absence of immediately available alternative private-sector measure**

- (29) There is no immediately available alternative private sector measure that would prevent the failure of the Institution.
- (30) In addition, there is no reasonable prospect that any supervisory action, including early intervention measures, could prevent the failure of the Institution. [...].
- (31) 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 (EU) No 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.
- (32) 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**

- (33) 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**

- (34) 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.
- (35) 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**

- (36) 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**

- (37) The scope of the power to suspend certain obligations of the entity shall be exercised in accordance with Article 105 of Croatian Bank Recovery Act, having regard to the timing and other relevant circumstances. In particular, the power to suspend certain obligations of the institution or entity might apply to any payment obligations and fulfillment obligations pursuant to all contracts to which the institution or entity is a party but except for the express exceptions set out in recital 29 below and the daily allowance referred to in Section 4.4 above. When deciding on the scope of suspension to which the said decision will apply, the resolution authority shall take into consideration the circumstance of each individual case and carefully assess suitability of the suspension decision on eligible deposits, especially covered deposits held by the natural persons, micro, small and medium-sized enterprises.
- (38) The power to suspend certain obligations shall not apply to payment or delivery obligations to the following:
- (a) systems and operators of systems referred to in regulation applicable to final settlement;
  - (b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;
  - (c) central banks.

### **4.4 Determination of daily allowance**

- (39) In line with Article 30 and Article 31 of Regulation (EU) No 806/2014 the Board shall cooperate with the Hrvatska Narodna Banka (Croatian National Bank) -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.
- (40) In particular, to appropriately take into account the timing and the particular circumstances of the Institution, the Hrvatska Narodna Banka (Croatian National Bank) 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 Croatian National Bank is instructed to:

- a) suspend all payment or delivery obligations pursuant to any contract to which the SBERBANK d.d., Varšavska 9, Zagreb, Republic of Croatia, registered with the court registry of Commercial court in Zagreb under no. (MBS) 080162398, PIN(OIB): 78427478595 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 d.d. 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 d.d. 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**

Hrvatska Narodna Banka (Croatian National Bank) 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 the Croatian National Bank, 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, the Croatian National Bank shall implement this Decision in line with the national law, including by notifying Sberbank d.d. 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