

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 banka d.d.

(SRB/EES/2022/18)

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 Slovenian Resolution and Compulsory Winding-Up of Banks Act (ZRPPB-1)³, and in particular Articles 86 and 89 thereof,

Whereas:

1. The facts and the relevant national law

1.1 The Institution

(1) The Sberbank banka d.d., (the “**Institution**”) is a subsidiary within the group of 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):

- Sberbank banka d.d. (Republic of Slovenia);
- Sberbank d.d. (Republic of Croatia);
- Sberbank Magyarország Zrt. (Hungary);

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.

³ *Zakon o reševanju in prisilnem prenehanju bank (ZRPPB-1)*, Official Gazette of the Republic of Slovenia no. 92/21.

- Sberbank CZ, a.s. (The Czech Republic);
 - Sberbank BH d.d. (Bosnia Herzegovina Sarajevo);
 - 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 12 branches and 371 employees. The Institution is a medium size bank that provides a wide range of financial services and products to the retail sector (private individuals and entrepreneurs), to small and medium sized companies and to larger corporations. In the retail segment, the Institution focuses on digitalisation and development of new sales channels and approaches. In corporate sector, the bank focuses on small and medium-sized companies and large companies in the corporate sectors.

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) 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 [...]. Despite the measures taken, the counterbalancing capacity of the Institution continued to deteriorate.
- (7) Overall, given the increased liquidity outflows that the Institution is facing which are expected to continue, the lack of plausible additional liquidity generating measures and the additional liquidity support from the Austrian parent, the Institution is expected to be unable to cover its liabilities as they fall due. The readily available counterbalancing capacity is deemed insufficient to cover outflows over [...].
- (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 SRMR 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 Board in line with Article 20 of Regulation (EU) No 806/2014 ("SRMR") 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 the SRMR ("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 SRMR.

- (10) The Valuation 1 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) SRMR. 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) SRMR.

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 a 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 SRMR, 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 Slovenia, a participating Member State within the meaning of Article 4(1) of SRMR, 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 SRMR, 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

- (17) Pursuant to Article 33a of Directive 2014/59/EU as transposed in Article 86, paragraph 1 of the Slovenian Resolution and Compulsory Winding-Up of Banks Act (ZRPPB-1), 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 private sector measure referred to in point 2 of the first paragraph of Article 68 of ZRPPB-1 that would prevent the failure of the resolution entity; and
 - c) the suspension of obligations is necessary to prevent further deterioration of the financial conditions of the resolution entity; 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 exercise 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) subparagraph 2 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 SRMR.
- (20) In particular, the ECB considered that the Institution has suffered a deteriorating liquidity situation. Particularly, [...] a wave of deposit withdrawals in the Institution. Financial institutions outside Sberbank Europe AG's group have widely ceased to engage in funding relations with the Institution and its Austrian parent, [...].
- (21) The Institution had prepared for the possibility that it could come under intensified sanctions and had taken several pre-emptive measures. Despite this it did not manage to restore the counterbalancing capacity of the Institution, which has been reduced since 23 February 2022, from EUR [...] to EUR [...], representing a reduction of [...].
- (22) Since 23 February 2022 till 25 February 2022, the Institution sustained EUR [...] deposit outflows (circa [...]% of its total deposit base as of 23 February 2022). Most of these outflows were related to [...]. The outflows accelerated significantly on 25 February 2022, when a reduction of [...]% of total deposits was observed within [...].
- (23) The Institution has tried to strengthen its liquidity position by [...]. Despite the measures, the counterbalancing capacity of the Institutions continued deteriorating.
- (24) Overall, given the increased liquidity outflows that the Institution is facing which are expected to continue, the lack of plausible additional liquidity generating measures and the additional liquidity support from Sberbank Europe AG, the Institution is expected to be unable to cover its liabilities as they fall due. The readily available counterbalancing capacity is deemed insufficient to cover outflows [...].

- (25) Additionally, the LCR went from [...] as of 24 February to [...] as of 25 February 2022. According to the ECB information, none of the actions performed by the entity managed to restore the ratio at more comfortable level. Moreover, the Institution may face additional liquidity pressures [...]. In case the liquidity position of the bank continues to evolve like in the same days, the LCR is expected to fall [...].
- (26) Moreover, the Institution has limited additional options to restore its liquidity position. [...].
- (27) [...].
- (28) [...].
- (29) In view of these considerations, the ECB concluded that:
- no measures contained in the recovery plan, both individually as well as in conjunction, would have sufficient impact on the liquidity position of the Institution in a timely manner to address the liquidity outflows the Institution is facing.
 - given the increased liquidity outflows that the Institution is facing, which are expected to continue and the absence of any credible additional liquidity generating measures in the short term, the Institution is expected to be unable in the near future to pay its debts or other liabilities as they fall due.
- (30) The main findings of the Valuation Report relating to Article 18(4)(c) SRMR can be summarised as follows.
- (31) From 07.02.2022 to 22.02.2022 the liquidity situation remained relatively stable. On 23 February 2022 the Institution's counterbalancing capacity amounted [...].
- (32) The accelerated escalation of the geopolitical tensions between Russia and Ukraine [...] has ultimately caused significant deposit withdrawals.
- (33) In more detail, from 23 to 25 February 2022, due to significant withdrawal of deposits (circa EUR [...]), the Counterbalancing Capacity (CBC) of the Institution was reduced to EUR [...]), which reduced its LCR to [...]. 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.
- (34) [...].
- (35) Moreover, according to the ECB, the current readily available counterbalancing capacity is deemed insufficient to cover outflows [...]. 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.
- (36) The Group admitted that the Institution is FOLTF by submitting the FOLTF notification to the SRB.
- (37) 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 measures

- (38) There is no immediately available alternative private sector measure that would prevent the failure of the Institution.
- (39) In addition, there is no reasonable prospect that any supervisory action, including early intervention measures, could prevent the failure of the Institution. [...].
- (40) 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 SRMR 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.
- (41) 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

- (42) 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 public interest in resolution

- (43) In light of the deteriorating financial conditions of the Institution 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.
- (44) 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

- (45) 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/EU, as transposed under national law.

4.3 Scope of the power to suspend certain obligations

- (46) The scope of the power to suspend certain obligations of the entity shall be exercised in accordance with Articles 86 and 89(1) of ZRPPB-1 having regard to the timing and other relevant circumstances.

In particular, in accordance with Article 86(3) of ZRPPB-1 the following circumstances have been considered in determining the scope of suspended obligations:

- (a) the appropriateness of extending the suspension to eligible deposits, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises. In this relation

it has been considered that the deposits constitute in the current point of time the primary source of outflows for the entity. Therefore, it is appropriate and necessary 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,

- (b) the impact the exercise of that power might have on the orderly functioning of financial markets,
- (c) the existing national rules, as well as supervisory and judicial powers, to safeguard creditors' rights and equal treatment of creditors in normal insolvency proceedings. In the case at hand the following statutory safeguards have been considered as especially important: (i) existing rights of creditors in relation to the assets of the resolution entity are fully recognised, including a right to a separate settlement from the assets over which they hold a security right, a right arising from financial collateral, a right to set-off; (ii) existing rights of creditors in relation to seniority and/or ranking of their claims towards the resolution entity; (iii) the provisions on equitable treatment of the claims of the same class; (iv) nature and duration of the moratorium; (v) all other circumstances referenced in this Decision. The suspension of certain obligations hereunder does not extinguish, diminish, alter or terminate such rights of creditors and safeguards to their benefit, since it only temporarily, suspends exercising of their rights,
- (d) the impact the determination of public interest as set forth in Item 3 of Article 68(1) of ZRPPB-1 might have on the orderly performance of the normal insolvency proceedings.

(47) Having regard to the above, the suspension of obligations of the entity shall apply to the following:

(a) all payment or delivery obligations pursuant to any and all contracts to which a resolution entity is a party including but not limited to eligible deposits, especially to covered deposits held by natural persons and micro, small and medium-sized enterprises as defined in Article 5(39) of ZRPPB-1; and

(b) all payment or delivery obligations with regard to the secured liabilities as defined in Article 5(60) of ZRPPB-1, including the liabilities where the right of the creditor to payment or other form of performance is secured by a pledge (*zastavna pravica*), guarantee (*poroštvo*), lien (*pravica do izvršbe*), or collateral arrangements (*dogovor o zavarovanju*) including liabilities arising from repurchase transactions and other title transfer collateral arrangements; and

(c) the rights to termination (*pravica do odpovedi*) as defined in Article 5(51) of ZRPPB-1 of the contractual counterparties with regard to the contracts, which includes a right to terminate a contract, a right to accelerate, close out, set-off or net obligations or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract or a provision that prevents an obligation under the contract from arising that would otherwise arise.

(48) 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 third country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;

(c) central banks.

- (49) In accordance with Article 87 of ZRPPB-1, the period of the suspension that has been determined is as short as possible and does not exceed the minimum period of time that has been considered necessary for the purpose of preventing further deterioration of the financial conditions of the resolution entity. The suspension in any event shall not last longer than the period from the publication of a notice of suspension and until the end of the business day following the day of the publication.
- (50) In addition, the appropriateness of extending the suspension to obligations beyond the above described obligations 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 liquidity 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

- (51) In line with Article 30 and Article 31 of Regulation (EU) No 806/2014 the Board cooperates with the Banka Slovenije (Bank of Slovenia) 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.
- (52) In particular, to appropriately take into account the timing and the particular circumstances of the Institution the Banka Slovenije (Bank of Slovenia) assess 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

Banka Slovenije (Bank of Slovenia) is instructed to:

- a) suspend all payment or delivery obligations pursuant to any contract to which the Sberbank banka d.d., Dunajska cesta 128A, 1000 Ljubljana, Slovenia, registration number (*matična številka*): 5496527000, 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 banka 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 banka 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

Banka Slovenije (Bank of Slovenia) 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 Banka Slovenije (Bank of Slovenia), 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, Banka Slovenije (Bank of Slovenia) shall implement this Decision in line with the national law, including by notifying Sberbank banka 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