

DECISION OF THE SINGLE RESOLUTION BOARD

Date	01/03/2022
Title	Adoption of a resolution scheme in respect of Sberbank banka d.d.
Reference	(SRB/EES/2022/20)

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 Article 18(6), and Article 24 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 investments 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,

Having regard to the endorsement by the European Commission,

Whereas

1. The facts and the relevant national law

1.1 The Institution

- (1) Sberbank banka d.d. (LEI: 529900NQF1UOZPME3N44) (the “**Institution**”) is a credit institution established in Slovenia. The majority shareholders of the Institution is Sberbank Europe AG (the “**Parent**”), established in Austria, which has a shareholding of 99.99%.
- (2) The Parent has also the following material subsidiaries, located in different jurisdictions (EU and third countries):
 - a) Sberbank d.d. (Croatia);
 - b) Sberbank Magyarország Zrt. (Hungary);

¹ OJ L 225, 30.7.2014, p. 1.

² OJ L 173, 12.6.2014, p. 190.

- c) Sberbank CZ, a.s. (The Czech Republic);
 - d) Sberbank BH d.d. (Bosnia Herzegovina Sarajevo); and
 - e) Sberbank a.d. Banja Luka (Bosnia Herzegovina) (together, the “**Group**”).
- (3) The shares of the Parent are held by Sberbank of Russia (“**Sberbank of Russia**”).
- (4) As at 31 December 2020, the Group’s total assets amounted to EUR 12 942 billion. The Group has 187 branches, 773 000 customers³ and it operates in three main segments: large corporates & investment banking (corporate financing, trade finance, transaction banking, acquisition financing, real estate financing), small and medium enterprises (“**SMEs**”) (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).
- (5) 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 the corporate segment, the bank focuses on small and medium-sized companies and large companies in the corporate sectors.

The Institution is the ninth largest credit institution in the Republic of Slovenia in terms of assets. As at 31 December 2021, the Institution had total assets of EUR 1 721 billion.⁴ As at 31 December 2020, the Institution had 12 branches and 371 employees.

1.2 The resolution plan

- (6) On 3 May 2021, the Single Resolution Board (“**SRB**” or “**Board**”) adopted the resolution plan in respect of the Institution (“**Resolution Plan**”)⁵. In the Resolution Plan, the Board assessed that the liquidation of the Institution under normal insolvency proceedings would not be credible since it would not achieve the resolution objectives, referred to in Article 14(2) of Regulation (EU) No 806/2014, to the same extent as resolution.
- (7) In particular, it was considered that the Institution’s liquidation under normal insolvency proceedings would likely have severe adverse effects on the functioning of the financial market in its entirety and on the real economy of the Republic of Slovenia.
- (8) The Board also concluded that the Institution performs critical functions, i.e. lending to SMEs, the discontinuance of which, in case of the application of normal insolvency proceedings to the

³ As at 31 December 2020.

⁴ FINREP report as at 31 December 2021.

⁵ RC/JD/2020/22

Institution, could have severe effects on the functioning of the financial markets and the real economy of Republic of Slovenia.

- (9) The Resolution Plan indicated the open bank bail-in applied at the level of the Austrian Parent as the preferred resolution tool and sale of business as a variant resolution tool.
- (10) While conditions for resolution are met at the level of the Institution, the SRB will not apply resolution action at the level of the Austrian Parent. This is mainly supported by the fact that the updated public interest assessment at the level of the Austrian Parent is negative under the current circumstances and the fact that resolution action at group level is not considered necessary. Unlike Croatia and Slovenia, the presence of the Group in Austria is not critical for the real economy and financial stability in Austria. In addition, a bail-in at the level of the Austrian Parent preceded by a loss upstreaming would not be able to restore the liquidity position of the Institution, in the absence of liquidity support downstream.
- (11) Furthermore, the SRB considers that the services provided to the Institution by the ultimate Russian parent undertaking via the Austrian Parent, as well as by the Austrian Parent directly are deemed not critical in the current context of failing or likely to fail and the Institution has indicated its readiness to set up local solutions to substitute these services in the immediate term so as to ensure the continuity of the core business lines on a provisional basis, and to replace them in the context of the sale of business as the chosen resolution tool.
- (12) Therefore, instead of applying resolution actions at the level of the Austrian Parent (as initially envisaged in the resolution plan), it is considered appropriate to apply resolution action at the level of each of the Banking Union subsidiaries that meet the conditions for resolution. As further elaborated below, the SRB considers that the conditions for resolution set out in Article 18(1) of Regulation (EU) 806/2014 are met at the level of the Institution.
- (13) The Board has also examined if the application of the Sale of business tool to the Institution and the exercise of the resolution would minimise the impact on other group entities and on the group as a whole action pursuant to Article 15(2) of Regulation 806/2014. In this case, the sale of business tool in the form of transfer of shares in the subsidiary can be carried out directly by the SRB at the level of the subsidiary without needing to place the Parent into resolution.

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

- (14) 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 (the “EU”) and the United States of America (the “U.S.”) imposed a set of sanctions that had a significant impact on the Institution.
- (15) In particular, the U.S. economic sanctions announced on 24 February 2022 required all U.S. financial institutions to close any Sberbank correspondent or payable-through accounts within 30 days and to reject any future transactions involving Sberbank or its foreign financial institutions subsidiaries. The above sanctions would significantly sever the Institution’s access to U.S. correspondent accounts, direct or otherwise and the clearance of any transactions via

U.S. institutions. As a result of the above sanctions, the Institution has been significantly impacted.

- (16) The Institution suffered a deteriorating liquidity situation. Particularly, the consequence of the imposed sanctions has had a reputational impact, which triggered 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.
- (17) 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 [...].
- (18) 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.

1.4 The national law with respect to normal insolvency proceedings

- (19) In accordance with Article 2(1)(47) of Directive 2014/59/EU, ‘normal insolvency proceedings’ means “*collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator or an administrator normally applicable to institutions under national law and either specific to those institutions or generally applicable to any natural or legal persons*”.
- (20) In Slovenia, normal insolvency proceedings for banks are subject to a specific legal regime, distinct from insolvency proceedings for other legal entities, that is regulated in Chapter 3 of the Resolution and Compulsory Winding-Up of Banks Act (Zakon o reševanju in prisilnem prenehanju bank, Official Gazette of the Republic of Slovenia, No 92/21) (“**ZRPPB-1**”). Normal insolvency proceedings are applied on a single entity basis only.
- (21) In case of a bank, ZRPPB-1 provides for two distinct proceedings, together referred to as the compulsory winding-up of bank (prisilno prenehanje banke), that are deemed normal insolvency proceedings in accordance with the definition of Article 5(42) of ZRPPB-1 that implements Article 2(1)(47) of Directive 2014/59/EU into Slovenian law:
 - (a) Compulsory liquidation (prisilna likvidacija banke), which is laid down in Sub-Chapter 3.2 of ZRPPB-1 (Articles 171 – 223): This procedure is commenced by the Bank of Slovenia as the national resolution authority either (i) in case the banking authorisation is withdrawn and/or it ceases, or (ii) in case it establishes that the conditions for resolution set forth in Article 68(1)(1) and 68(1)(2) of ZRPPB-1 (Article 32(1)(a) and (b) of Directive 2014/59/EU)

are met, but a resolution action would not be in the public interest because goals from Article 27(1)(3) of ZRPPB-1 could not be met (the resolution action would not achieve the goal of protecting public funds by minimising reliance on extraordinary public financial support) (Article 74(1) of ZRPPB-1 implementing Article 32b of Directive 2014/59/EU). The Bank of Slovenia issues a decision on commencement of the compulsory liquidation of the bank establishing the reasons for the commencement of this procedure, appointing one or more liquidators, and setting-out the limitations of the bank's business. The bank's corporate bodies are discharged of their powers and duties.

- (b) Bank bankruptcy (stečaj banke), which is laid down in Sub-Chapter 3.3 of ZRPPB-1 (Articles 224 - 230) and by way of Article 169 of ZRPPB-1 also Chapter 5 of the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju, Official Gazette of the Republic of Slovenia, No 176/21 – officially consolidated text, 178/21 –corr., and 196/21)("ZFPPIPP") (Articles 222 – 418). This procedure is commenced by the court upon request of the Bank of Slovenia NRA that is filed based on the NRA's decision on conclusion of the compulsory liquidation procedure over the bank by the Bank of Slovenia. In its decision the court also appoints the bankruptcy administrator, following the proposal of the Bank of Slovenia. The bankruptcy administrator has the power to administer and liquidate the bankruptcy estate (including dispose with assets) in accordance with general rules on bankruptcy proceedings over legal entities set forth in ZFPPIPP. The Bank of Slovenia NRA appoints one or more business administrators to assist the bankruptcy administrator with the administration and liquidation of the bankruptcy estate.
- (22) In the light of the above, in the present situation, the bank compulsory liquidation proceedings are deemed to constitute the 'normal insolvency proceedings' within the meaning of Article 2(1)(47) of Directive 2014/59/EU and Article 5(42) of ZRPPB-1 for the purposes of performing the public interest assessment.

2. Valuation 1

- (23) The SRB performed a provisional valuation 1 (attached hereto as **Annex 1**) to inform the determination whether conditions for resolution are met. According to the provisional valuation 1, the SRB has no further elements to be taken into account than those provided by the ECB in its FOLTF assessment. Concretely, 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. The FOLTF assessment has no indication for considering that the Institution does either infringe capital requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation pursuant to Article 18(4)(a) of Regulation 806/2014, or that its assets, in the near future, will be less than its liabilities, pursuant to the Article 18(4)(b) of Regulation 806/2014.

3. Procedure

- (24) On 31 January 2022, the SRB was informed that the ECB decided to activate enhanced monitoring of the Institution in accordance with the ECB's crisis management arrangements. As of that date, the SRB regularly requested the ECB and relevant National Resolution Authorities ("NRAs") to provide it with specific and updated information with regard to the Group and the Institution. Moreover, the SRB has been in contact with the relevant members of the European resolution college.
- (25) The information exchange between the SRB, the ECB and the relevant NRAs has been continuous since then and intensified on 22 February and further on 24 February 2022.
- (26) The SRB attended the ECB's Supervisory Board meetings on 17, 23 and 27 February 2022, where the Institution was discussed, as well as the Institution-Specific Crisis Management Team meetings for the Institution on 25 and 26 February 2022.
- (27) On 25 February 2022, the SRB informed the European Commission about the rapidly deteriorating situation of the Institution and the next steps. Over the following days, several interactions took place between the SRB and the European Commission with a view to keeping the latter informed on all relevant developments regarding the Institution.
- (28) On 25 February 2022, the SRB requested the ECB to provide it with specific and updated information with regard to the Group.
- (29) On 25 February 2022, Sberbank CZ, A.S. (the Czech subsidiary of the Group) notified to the Czech National Bank that it is failing or likely to fail. On 26 February 2022, the Czech National Bank reached the conclusion that Sberbank CZ, A.S. was failing or likely to fail and subsequently notified to the SRB its determination to wind it down under the normal insolvency proceedings applicable in the Czech Republic.
- (30) The ECB and the EC attended the SRB Extended Executive Sessions of the Institution on 26, 27, 28 February and 1 March 2022.
- (31) On 26 February 2022, the Parent notified to the ECB that, due to the substantial deposit outflows, which severely impacted the Parent and the Group's liquidity reserves and liquidity coverage ratio, it could reasonably be expected that it is likely to be unable to pay its debts and liabilities as they fall due in the near future.
- (32) On 27 February 2022, the ECB communicated to the Board its draft FOLTF assessment regarding 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.
- (33) On 27 February 2022, the Board provided the ECB with its formal response on the above draft FOLTF assessment.
- (34) On 27 February 2022, the ECB has reached the conclusion that the Institution will, in the near future, be unable to pay its debts or other liabilities as they fall due. Therefore, the Institution is

deemed to be failing or likely to fail in accordance with Article 18(4)(c) of Regulation (EU) No 806/2014. On the same date, the ECB communicated its final FOLTF assessment to the Board.

- (35) On 27 February 2022, the SRB finalised its provisional Valuation 1 (attached hereto as **Annex 1**).
- (36) On 27 February 2022, the SRB adopted a decision concerning the exercise of its powers under Article 33a of Directive 2014/59/EU, as transposed under national law, and instructed the NRA to implement that decision in line with the national law.
- (37) On 28 February 2022, the Bank of Slovenia adopted the national implementing act putting the moratorium in force until 23:59:59 hours on 1 March 2022.
- (38) On 28 February 2022, the Bank of Slovenia launched a competitive marketing process, by contacting four identified potential purchasers. The Bank of Slovenia provided the identified potential purchasers with access to the Institution's information.
- (39) On 28 February 2022 the Bank of Slovenia received two closed envelopes.
- (40) On 28 February 2022, the Board finalised its provisional valuation 2 (attached hereto as **Annex 2**).
- (41) On 28 February 2022, the Bank of Slovenia opened the envelopes including the binding offers, with the presence of the notary public, which recorded the procedure. Two binding offers were received.
- (42) On 28 February 2022, the Bank of Slovenia informed the SRB about the binding offers received by the potential purchasers.
- (43) On 28 February 2022, the SRB invited the two bidders, who had already submitted binding offers, to consider submitting updated offers. Both bidders submitted updated offers.
- (44) On 1 March 2022, the ECB provided information on the bidder who presented the first highest offer.
- (45) On 1 March 2022, the Board adopted the resolution scheme and transmitted it to the Commission.
- (46) On 1 March 2022, the Commission endorsed the resolution scheme.

4. Legal and economic assessment

4.1 Competence of the Single Resolution Board

- (47) Pursuant to Article 7(2) of Regulation (EU) No 806/2014, the Board is responsible for adopting all decisions relating to the resolution for the entities and groups referred to therein, including entities which are credit institutions established in a participating Member State as defined in

Article 4(1) of Regulation (EU) No 806/2014 and are considered to be significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013⁶.

- (48) The Institution is a credit institution established in the Republic of Slovenia, 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 adoption of a resolution scheme when the Board assesses that the conditions referred to in Article 18(1) of Regulation (EU) No 806/2014 are met.
- (49) In accordance with Article 29(1) of Regulation (EU) No 806/2014, National Resolution Authorities should implement all decisions addressed to them by the SRB and should take any action to comply with such decisions. Accordingly, the Slovenian NRA is expected to take all necessary measures in line with this Decision, having regard to any requirements applicable under national law.

4.2 Conditions laid down in Article 18(1) of Regulation (EU) No 806/2014

- (50) In accordance with Article 18(1) of Regulation (EU) No 806/2014, the Board should adopt a resolution scheme in relation to an entity when the following conditions are met:
- (a) the entity is failing or is likely to fail pursuant to Article 18(4) of Regulation (EU) No 806/2014 having regard to timing and other relevant circumstances, there is no reasonable prospect that any alternative private sector measures or supervisory action, including early intervention measures or the write-down or conversion of relevant capital instruments in accordance with Article 21 of Regulation (EU) No 806/2014, taken in respect of the entity, would prevent its failure within a reasonable timeframe; and
 - (b) a resolution action is necessary in the public interest pursuant to Article 18(5) of Regulation (EU) No 806/2014.

4.2.1 The Institution's failure or likelihood of failure

- (51) 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(4)(c) of Regulation (EU) No 806/2014.
- (52) In particular, the ECB considered that following the intensification of the geopolitical tensions between Russia and Ukraine and the imposition of sanctions from the U.S. and EU authorities, the Institution has suffered a reputational crisis that resulted in a deterioration of its liquidity situation. Particularly, the consequences of the imposed sanctions have been twofold: i) a reputational impact which has triggered a wave of deposit withdrawals from the Institution; and ii) the loss of access to USD correspondent banking and the loss of access to USD payments.

⁶ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, p. 63.

Despite the U.S. sanction measure only taking effect on 26 March 2022, the impact on the behaviour of depositors and potential market counterparts is already fully manifested without any indication of potential reversal.

- (53) From 23 February 2022 to 25 February 2022, the Institution sustained EUR [...] deposit outflows, equal to [...]% 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 1 day.
- (54) In addition, due to the risk of falling under the sanctions regime, financial institutions outside the Group have widely ceased to engage in funding relations with the Institution and its parent, which practically cuts it off from external interbank funding. The fact that external funding became unavailable demonstrates the significant reputational crisis the Institution is facing.
- (55) The Institution had prepared for the possibility that it could come under intensified sanctions and had taken several pre-emptive measures [...].
- (56) The actions taken by the Institution 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 [...]%. In terms of probable liquidity evolution, if the Institution continues to experience the same rate of outflows as observed after the imposition of the sanctions, its liquidity buffers are expected to be depleted in less than [...].
- (57) Similarly, the Liquidity Coverage Ratio (“**LCR**”) dropped from [...]% on 24 February to [...]% on 25 February 2022, as none of the above-mentioned actions managed to restore the ratio to a more comfortable level. Moreover, the Institution may face additional liquidity pressures due to the reputational impact of the failure of the Czech subsidiary of the Parent, which has become illiquid. In case the liquidity position of the bank continues to evolve like in the past days, the LCR is expected to fall close to [...] in [...], as a result of [...].
- (58) Moreover, the Institution has limited additional options to restore its liquidity position. In particular, the recovery measures identified by the Institution include: [...]. As a result, 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.
- (59) [...].
- (60) On 26 February 2022, the Parent, submitted a letter to the ECB, to the Financial Market Authority of Austria and to the Board informing them that it could reasonably be expected that the Parent is likely to be unable to pay its debts and liabilities as they fall due in the near future and that there were circumstances which indicated that the Parent’s ability to fulfil its obligations was endangered. [...].
- (61) In view of these considerations, the ECB considered that, 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.

- (62) The main findings of the Valuation 1 Report for the purposes of assessing the condition laid down in Article 18(4)(c) of Regulation 806/2014 can be summarised as follows.
- (a) From 07 February 2022 to 22 February 2022 the liquidity situation remained relatively stable. On 23 February 2022, the Institution's counterbalancing capacity amounted to EUR [...] (mainly cash, excess reserves and HQLA securities and a minor amount of undrawn committed facilities).
 - (b) The accelerated escalation of the geopolitical tensions between Russia and Ukraine and the subsequent imposition of sanctions by the EU, UK and US authorities has ultimately caused significant deposit withdrawals.
 - (c) 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 [...], 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 3% and 10% in a 30-day time horizon. However, as per the latest information received from the ECB the outflows were well above such rates in a shortertimeframe.
 - (d) Regarding the recovery measures identified in the parent's recovery plan, on 25 February 2022, Sberbank of Russia declined [...] EUR [...], which might have been used to support the Institution. Other measures have not been deemed feasible given the current situation.
 - (e) 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.
- (63) Following the ECB's assessment and taking into account the above elements of Valuation 1, the Board considers that the condition specified in Article 18(1)(a), in combination with Article 18(4)(c), of the Regulation (EU) No 806/2014 is met in respect of the Institution.

4.2.2 Absence of a reasonable prospect to prevent the failure by means of alternative measures

- (64) In close cooperation with the ECB, the SRB concludes that there is no reasonable prospect that any alternative private sector measures could prevent the failure of the Institution within a reasonable timeframe.
- (65) In particular, the Institution currently has very limited options to obtain funding via regular market transactions or central bank operations and has not been able to mobilise sufficient additional liquidity. The Institution has put in place some measures to correct the liquidity position, namely it has already stopped any lending activities and started to actively reach out to clients for additional funding. Nevertheless, these measures have not been sufficient to reverse the deterioration of the liquidity position of the Institution. The recovery plan of the Institution also does not include any other options which would be suitable under the current circumstances, in terms of timing as well as of liquidity generation capacity. [...]. The Institution has not indicated any other prospect of alternative private solutions that could prevent its failure.

- (66) The Parent informed the ECB on 27 February 2022 that [...], were likely to trigger additional waves of outflows in the Institution.
- (67) [...].
- (68) In addition, there is no reasonable prospect that any available supervisory or early intervention measure could restore the liquidity position of the Institution in an immediate way and allow it to ensure sufficient time in order to implement such measures. The available measures to the ECB as competent authority under the national transposition of Article 104 of Directive 2013/36/EU (CRD IV) and Articles 27-29 of Directive 2014/59/EU or under Article 16 of Regulation (EU) No 1024/2013 (the SSM Regulation) have been explored but they are not expected to produce a result where the institution would 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.
- (69) At the same time, the exercise of the power to write down or convert the Institution's capital instruments in accordance with Article 21 of Regulation (EU) No 806/2014 independently of any resolution action would not be able to generate liquidity and thus prevent the failure of the Institution. In particular, given that the Institution is likely to fail due to its liquidity position, the write down and conversion of capital instruments would not be sufficient to restore the liquidity situation of the Institution.
- (70) In view of the above considerations, it is concluded that there are objective elements leading to the conclusion that there are no alternative measures that could prevent the failure of the Institution within a reasonable timeframe. Accordingly the condition set out in Article 18(1)(b) of Regulation (EU) No 806/2014 is satisfied in respect of the Institution.

4.2.3 Resolution action is necessary in the public interest

- (71) In accordance with Article 18(1)(c) and Article 18(5) of Regulation (EU) No 806/2014, the Board assesses whether resolution action in respect of the Institution is necessary in the public interest and in particular, whether resolution action is necessary for the achievement of, and is proportionate to, one or more of the resolution objectives referred to in Article 14(2) of Regulation (EU) No 806/2014 and winding up of the entity under normal insolvency proceedings would not meet those resolution objectives to the same extent.
- (72) For the purposes of this determination, it should be clarified that:
- (a) resolution action in the sense of Article 3(1)(10), 18(1)(c) and 18(5) of Regulation (EU) No 806/2014 should be understood for the purposes of this Decision as referring to the

resolution action to be carried out through the application of resolution tools and powers as specified in this Decision;

- (b) winding up of the Institution under normal insolvency proceedings in the sense of Article 18(5) of Regulation (EU) No 806/2014 should be understood for the purposes of this Decision as referring to the application of the proceedings referred to in recital (22).

4.2.3.1 Ensuring the continuity of critical functions

- (73) In line with Article 2(1)(35) of Directive 2014/59/EU and Article 6 of Commission Delegated Regulation (EU) 2016/778,⁷ a function is considered critical where the following conditions are met:
 - (a) it is provided by an institution to third parties not affiliated to the institution;
 - (b) the sudden disruption of that function would likely have a material negative impact on the third parties, give rise to contagion or undermine the general confidence of market participants due to the systemic relevance of the function for the third parties and the systemic relevance of the institution in providing the function; and
 - (c) it is not considered substitutable since it cannot be replaced in an acceptable manner and within a reasonable time frame.
- (74) In the Institution's 2020 Critical Function Report and its 2021 Recovery Plan, the Institution identified the following function as critical:
 - a) Lending activities to SMEs.

4.2.3.1.1 Identification of critical functions

4.2.3.1.1.1 Deposit taking

- (75) For most sub-functions within this market segment, the Institution reported at 31 December 2021 a national market share ranging from [...] % to [...] %, except for the sub-function of deposits from general government, which amounts to [...] %. Nonetheless, the value on accounts for this sub-function is the lowest compared to the other market participants in the deposit taking function in Slovenia.
- (76) In addition, the number of clients is as follows: households deposits: [...] clients with value on accounts of EUR [...]; non-financial corporations (SMEs): [...] clients with value on accounts of EUR [...]; non-financial corporations (non-SMEs): [...] clients with value on accounts of EUR [...]; general governments: [...] clients with value on accounts of

⁷ 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.

EUR [...]. For all the sub-functions, the number of clients is relatively small compared to national values and the market impact of a disruption would be limited.

- (77) With regard to substitutability, the assessment shows that the functions performed by the Institution in this market segment are easily substitutable by other market participants within a reasonable timeframe, thereby limiting the potential impact on the real economy and the financial markets.
- (78) Having regard to the elements above, it is also noted that it is unlikely that a sudden disruption of the deposit taking activity would have a material negative impact on depositors, give rise to contagion or undermine the general confidence of market participants.
- (79) In light of the above, the Board considers that the Institution's deposit-taking function does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

4.2.3.1.1.2 Lending and loan services activities

- (80) The Institution reported only one of the lending functions as critical [...], i.e. lending to non-financial corporations – SMEs. According to the latest available data (31 December 2021), the market share for this function stands at [...], compared to [...] registered in the previous year (with lending volumes remaining stable at EUR [...]) and the Institution comes [...] on the market for this segment, [...].
- (81) Based on information provided by the Institution and the Bank of Slovenia, an analysis of the composition of the Institution's client base was carried out having regard to:
- The top 20 main clients of the SME lending portfolio, in terms of lending volume;
 - The top 20 worst rated clients of the SME lending portfolio (excluding defaulting/non-performing loans);
 - The top 10 clients per segment in terms of lending volumes, including also details on collateral and rating of these clients.
- (82) The analysis shows that most of the SME clients generally have only one banking relationship.
- (83) Regarding substitutability, while other market competitors could potentially provide similar products to those offered by the Institution, the timeframe for substitution of future lending volumes is estimated to be [...]. This is considered significant, given that [...].
- (84) Consequently, this function is considered critical as it is likely that its sudden disruption would have a material negative impact on third parties, give rise to contagion or undermine the general confidence of market participants due to the systemic relevance in Slovenia. In addition, other

market participants would not be able to substitute this function within an acceptable manner in a reasonable timeframe.

- (85) For the other lending functions, the Institution's market shares range from [...]% to [...]%. There are various other players on the market (amongst the significant and less significant institutions in Slovenia) which provide lending across the whole market segment, some in more substantial volumes than the Institution. As such, it is considered that, at this point in time, other market players have the capacity, as well as the liquidity levels, to substitute these functions easily.
- (86) In light of the above, the Board concluded that only the SME lending function provided by the Institution constitutes a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

4.2.3.1.1.3 Payments, cash, settlement, clearing or custody services

- (87) The Institution provides payment services to monetary financial institutions ("MFIs") and non-MFIs as well as cash services. However, the market shares in Slovenia are negligible ([...]-[...]%), according to data as at 31 December 2021. The value of transactions and the number of daily transactions is considered immaterial (payment services to MFIs: EUR [...] and [...] respectively; payment services to non-MFIs: EUR [...] and [...] respectively; cash services: EUR [...] and [...] respectively). The impact of the Institution ceasing to provide these functions would consequently be low, as other players in the national market can reasonably substitute the sub-functions carried out by the Institution.
- (88) In light of the above, it is concluded that the Institution's payments, cash, settlement, clearing or custody services function does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

4.2.3.1.1.4 Capital markets and investment activities

- (89) According to data reported at 31 December 2021, the Institution did not provide any services to third parties related to derivatives for trading –OTC.
- (90) In light of the above, the Board concluded that the Institution's capital markets and investment activities function does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

4.2.3.1.1.5 Wholesale funding markets activities

- (91) The Institution reported national market shares of [...]% - [...]% for borrowing, lending, derivatives (assets) and derivatives (liabilities) activities in the wholesale function. Taking into consideration the volume of borrowing, lending and derivatives and comparing it to the size of the market, the wholesale funding markets activities function is small relative to the market size and borrowing represents only [...]% of the total balance sheet of the banking system and lending only [...]%. In addition, the majority of the amount related to parent funding. Therefore, in terms of size, these volumes are considered immaterial.
- (92) The expected time for substitution is [...], which is considered a short timeframe. Overall, the wholesale funding function across the whole segment

can be easily substituted in case the Institution ceases to provide it. It is also noted that the sudden disruption of the function is not likely to have a material negative impact on third parties, give rise to contagion nor undermine the general confidence of market participants.

- (93) In light of the above, the Board concluded that the Institution's wholesale funding markets activities function does not constitute a critical function within the meaning of Article 2(1)(35) of Directive 2014/59/EU.

4.2.3.1.2 The Institution performs critical functions

- (94) The Board concludes that the Institution provides one critical function (i.e. lending to SMEs), within the meaning of Article 2(1)(35) of Directive 2014/59/EU and taking into account the criteria set out in Article 6 of the Commission Delegated Regulation (EU) 2016/778. The Institution performs activities, services or operations the discontinuance of which would be likely to lead to: (i) the disruption of services that are essential to the real economy in the Republic of Slovenia and (ii) disruption of financial stability in the Republic of Slovenia.

4.2.3.1.3 Normal insolvency proceedings would not ensure the continuity of critical functions to the same extent as resolution action

- (95) Winding up of the institution under normal insolvency proceedings according to the ZRPPB-1 would not ensure the continuity of the lending to SMEs function to the same extent as the envisaged resolution action, which will ensure that the Institution will continue operating in its entirety immediately after the implementation of the resolution scheme.

4.2.3.2 Avoiding significant adverse effects on financial stability

4.2.3.2.1 Failure of the Institution would have significant adverse effects on financial stability

- (96) The failure of the Institution is likely to result in significant adverse effects on financial stability in the Republic of Slovenia. This is inferred from the following elements:
- a) With regard to systemic relevance, the Institution's total assets amount to EUR 1.721 billion (representing a market share of [...]%), as at 31 December 2021, and was ranked the seventh systemically important bank, out of sixteen credit institutions present in the Slovenian market. The Institution is not classified as an Other systemically important bank ("OSII") in the Slovenian banking system since its score for systemic relevance stands at [...], below the Slovenian OSII threshold of 500 basis points. Compared to other banks (excluding savings banks), the Institution ranks among the banks with lower (or average) shares of the criteria in aggregate terms.
 - b) Given the current unprecedented geopolitical developments and the sudden escalation of Russian-Ukrainian conflict, the risk of indirect contagion has risen markedly over the last weeks.

The main channel of potential indirect contagion stems from the impact the winding-down of the Institution would have on the national Deposit Guarantee Scheme (“DGS”) capacity and other credit institutions in the national market. [...].

- c) [...]. In essence, it is not excluded that applying insolvency proceedings to the Institution could lead to a loss of confidence in the Slovenian financial system and significant adverse effects on the financial stability in the Republic of Slovenia, especially in the current market circumstances.

4.2.3.2.2 *Normal Insolvency proceedings would not avoid significant adverse effects on financial stability to the same extent as resolution action*

- (97) Due to the unprecedented circumstances of the current geopolitical environment and, in parallel, the speed of the Institution's deterioration, the Board concludes that, if the Institution were to be placed under normal insolvency proceedings, this could cause a negative reaction by market participants leading to a subsequent disruption of the financial system, with the potential to harm the real economy. In particular, insolvency proceedings, which follow a complex procedure, would be associated with low confidence in the banking system and heightened risk of deposit runs and financial disruption.

⁸ [...].

- (98) On the other hand, the Board considers that the resolution action preserves the critical and other economic functions, services and core business lines of the Institution, ensuring operational and business continuity so that the uncertainty arising from the situation is reduced to the maximum possible extent. The purchaser will also ensure continuous access to the deposits and prompt liquidity provision, preventing any negative reputational effects on the broader Slovenian banking sector stemming from the failing or likely to fail declaration of the Institution.
- (99) Taking this into account, the Board's assessment is that normal insolvency proceedings would not avoid significant adverse effects on financial stability to the same extent as resolution action.

4.2.3.3 Protecting public funds by minimising reliance on extraordinary public financial support

- (100) In case the Institution is put under normal insolvency proceedings, no reliance on public funds in the form of "extraordinary public financial support" is foreseen. Any pay-out by the DGS to the covered depositors would not qualify as extraordinary public financial support and therefore, it is not taken into account when comparing insolvency with resolution⁹.
- (101) Given the information available, there are no elements indicating that extraordinary public financial support, within the meaning of Article 3(1)(29) of Regulation (EU) No 806/2014, would be provided in case of normal insolvency proceedings.

4.2.3.4 Protecting depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC

4.2.3.4.1 Protecting depositors covered by Directive 2014/49/EU

- (102) Slovenia has in place the DGS Fund as part of the protection of covered depositors in banks and investors – legal basis is Deposit Guarantee Scheme Act (Official Gazette of the Republic of Slovenia, Nos. 27/2016 and 17/22), transposing Directive 2014/49/EU into the legal order of the Republic of Slovenia. The DGS Fund is administered by the Bank of Slovenia.
- (103) Regular and extra-ordinary contributions from banks to the DGS fund are calculated and risk adjusted in accordance with the EBA Guidelines on methods for calculating contributions to deposit guarantee schemes (EBA/GL/2015/10). The Bank of Slovenia shall ensure that, by 3 July 2024 at the latest, the assets of the fund shall reach 0.8% of the total amount of all guaranteed deposits in the Republic of Slovenia.
- (104) Based on information available at 31 December 2021 (DGS information, FINREP and COREP) and 31 December 2020 (LDR), the liquidation of the Institution would imply a payout amounting to EUR [...] (or [...])% of the DGS' Available Financial Means). The available financial means of the DGS amount to EUR 122 million and the capped ex-post extraordinary contributions of banks amount to EUR [...], consequently this payout could be effected

⁹ See point 63 of the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis, OJ C 216, 30.7.2013, p. 1.

with the use of EUR [...] of Alternative Funding Arrangements or uncapped ex-post contributions from the surviving banks.

- (105) The deposits of private individuals, private individuals pursuing registered business activities, sole traders and legal entities (corporates) are covered by the deposit guarantee scheme. The guarantee covers a maximum of EUR 100 000 of the total stock of claims that a deposit holder (depositor) holds against a particular bank and savings bank.
- (106) In resolution action, the covered deposits will be protected given that the Institution in its entirety, including the covered deposits, is transferred to a private purchaser.
- (107) Therefore, the Board concludes that this objective will be achieved in resolution to the same extent as in case the bank is put into normal insolvency proceedings.

4.2.3.4.2 *Protecting investors covered by Directive 97/9/EC*

- (108) The Republic of Slovenia has transposed Directive 97/9/EC into national law, namely in Articles 450 et seq. of the Markets in Financial Instruments Act (Official Gazette of the Republic of Slovenia, Nos. 77/18, 17/19 – corr., 66/19 and 123/21) (the “**ZTFI-1**”). The investor protection scheme provided in ZTFI-1 also applies to the banks with performing investment services. ZTFI-1 provides that the aggregate claims of the investors that arise from the relationships as listed in Article 450(3) and (4) of ZTFI-1 are protected up to an amount of EUR 22 000.
- (109) The guarantee is provided by the other members of the scheme. The aggregate amount of this guarantee is reduced for the proceeds from the liquidation of liquid assets (which are not deemed a part of the bankruptcy estate) (Articles 454 and 455 of ZTFI-1). The members are required to pay the relevant amount of the guarantee to the bank account of the scheme when so ordered by the Securities Market Agency in accordance with Article 461 of ZTFI-1.
- (110) The guarantee is paid out by the bank which is within 20 days of the beginning of the bankruptcy proceeding appointed by the Bank of Slovenia. The identity of investors and the amounts to which they are entitled are established by the member of the investor protection scheme in bankruptcy within 3 months from the beginning of the bankruptcy (Article 457 of ZTFI-1) and recorded in the minutes. These minutes are reviewed and confirmed by the Securities Market Agency, following which it notifies the investors on the payout of the guaranteed investment amounts (Article 458 of ZTFI-1).
- (111) In view of the above, the Board concludes that the protection of investors covered in accordance with the provisions of Directive 97/9/EC will be ensured in case of application of normal insolvency proceedings.
- (112) In resolution action, investments will be protected given that the Institution will be transferred in its entirety to a private purchaser.
- (113) Therefore, the Board concludes that this objective will be met in resolution to the same extent as in case the Institution is placed under normal insolvency proceedings.

4.2.3.5 Protecting client funds and client assets

- (114) The Institution does not hold client funds or assets, based on the data reported at 31 December 2021.
- (115) Therefore, the Institution's failure will not affect the achievement of this objective.

4.2.3.6 Conclusion that resolution action is in the public interest

- (116) In light of the nature and the circumstances of the case, the Board concludes that a resolution action is necessary in the public interest, as it is necessary for the achievement of, and is proportionate to the resolution objectives referred in Article 14(2)(a) and (b) of Regulation (EU) 806/2014 and winding up the Institution under normal insolvency proceedings would not meet those objectives to the same extent.
- (117) More specifically, the resolution action is necessary for the achievement of, and is proportionate to:
- (i) ensuring the continuity of the lending to SMEs critical function; and
 - (ii) avoiding significant adverse effects on financial stability in the Republic of Slovenia, in particular by preventing contagion effects and a bank-run.

4.2.4 Conclusion: Conditions for resolution are met

- (118) It follows from the considerations set out above that the conditions for resolution in respect of the Institution are met. Accordingly, the Board is required to adopt a resolution scheme in respect of the Institution, in accordance with Article 18(6) of Regulation (EU) No 806/2014.

4.3 The resolution scheme

4.3.1 Valuation 2

- (119) On 23 February 2022, the Board hired an independent valuer, [...] in order to perform an economic valuation to inform the application of resolution tools in accordance with Article 20 of Regulation (EU) No 806/2014. [...].
- (120) Given the urgency of the circumstances of the case, determined by the rapid deteriorating liquidity situation, the Board carried out a provisional valuation 2 in accordance with Article 20(3) and (10) of Regulation (EU) No 806/2014, which is attached hereto as Annex 2. The preliminary valuation was carried out for the purpose of informing the decision on the assets, rights, liabilities or instruments of ownership of the Institution to be transferred and to inform the Board's

understanding of what constitutes commercial terms for the purposes of Article 24(2)(b) of Regulation (EU) No 806/2014 in respect to the Institution.

- (121) The Valuation 2 informs the Board that the estimated value of the shares of the Institution is in the range between EUR -2 million and 1 million.
- (122) The valuation range considers a buffer for additional losses that accounts for the extreme valuation uncertainty and the risk factors. In particular, the Institution has a significantly deteriorated financial situation aggravated by significant deposit outflows and severe impact of the recent increase in its reputational risks. Considering the financial situation of the Institution and the current circumstances that have worsened additionally its financial soundness and liquidity position, jointly with all the risk factors described in the Valuation 2 report, the Board considers that the price range fairly represents a disposal value that the purchaser might be willing to pay in the current circumstances.

4.3.2 Determination of the resolution tools to be applied

- (123) The resolution tool to be applied to the Institution is the sale of business tool in the form of transfer of shares of the Institution to a purchaser, pursuant to Article 24(1)(a) of Regulation (EU) No 806/2014.
- (124) The SRB considers that the application of other resolution tools set out in Article 22(2) of Regulation (EU) No 806/2014 would not meet the resolution objectives to the same extent in the case at stake. In particular:
- a) with regard to the application of the bail-in tool in accordance with Article 27(1)(a) Regulation (EU) No 806/2014 (even if combined with the asset separation tool), it cannot effectively address the liquidity situation of the Institution;
 - b) with regard to the bridge institution tool in combination with bail-in tool (even if combined with the asset separation tool), given that the bridge institution is considered a temporary solution aiming to maintain access to critical functions and to be sold within, in principle, the next two years, and to the extent that the sale of business tool achieves the same result within a shorter timeframe, the sale of business tool is considered to achieve the resolution objectives more effectively than the bridge institution tool;
 - c) Given the specific circumstances of the case, the sale of business tool in the form of transfer of shares will ensure that the Institution will continue operating as part of a group and thus would meet the resolution objectives more effectively than the above mentioned two options.
- (125) The application of the resolution tool as referred above provides an appropriate, necessary and proportionate way to meet the resolution objectives referred to in Article 14(2) of Regulation (EU) No 806/2014. By the application of the sale of business tool, the Board mainly aims to protect a critical function to the economy of the Republic of Slovenia and preserve financial stability.

4.3.3 Preparation for the application of the preferred resolution strategy

4.3.3.1 Marketing procedure and its outcome

- (126) The Bank of Slovenia conducted a marketing procedure. In particular, the Bank of Slovenia contacted a number of potential purchasers with the capital and liquidity capacity to immediately support the bank, the market reputation to stop the liquidity drain and the capacity to keep the continuance of the critical function identified.
- (127) Bank of Slovenia invited Nova ljubljanska banka d.d. ("NLB d.d."), Nova kreditna banka Maribor d.d. ("NKBM d.d.") and [...] (together as "potential purchasers") to submit an offer for purchase of the Institution. NLB d.d. and NKBM d.d. are two of the largest banks, since it was concluded they were capable to provide liquidity. Bank of Slovenia also invited [...].
- (128) Bank of Slovenia established an ad hoc commission to overlook the process of opening the offers and verify if tender requirements have been met.
- (129) Bank of Slovenia issued an identical tender process for the potential purchasers to compete with its biddings. The tender process required that the potential purchasers submit their offers to Bank of Slovenia no later than on 28 February 2022 by 15:00 hours.
- (130) With regard to the transparency requirement, the bidders had access to a virtual data room in which the main information on the transfer was disclosed. Furthermore, to guarantee proper representation, the Institution gave consent to the Bank of Slovenia to full disclosure of any information, including but not limited to, supervisory information, to potential purchasers.
- (131) Bank of Slovenia received sealed offers from NLB d.d. and [...], while NKBM d.d. sent a statement that it will not be submitting an offer. The opening of offers was recorded in minutes and verified by the notary public. Minutes are certified in the form of the notarial record, guaranteeing authenticity and credibility.
- (132) Both bidders submitted conditional offers. The SRB assessed the offers but in order to allow the successful closing of the transaction and effective application of the resolution action, the SRB considered appropriate to invite both bidders to update their offers. Both bidders submitted adjusted offers.
- (133) The updated bid from NLB d.d. included a nominal purchase price of EUR 5.108.504,32. The purchaser mentioned among others that the offer is submitted based on the assumption that the information and documents disclosed during the due diligence of the tender procedure is true and correct and not in any way misleading or omitting any material information as well as subject to the necessary regulatory approvals (banking and merger clearance). The tender was placed under the condition of obtaining the corporate approvals, which were confirmed on 1 March 2022.
- (134) The updated bid from [...] included a purchase price of [...].
- (135) Article 24(3) of Regulation (EU) No 806/2014 and Article 39(3) of Directive 2014/59/EU, as transposed by the national legislation in Slovenia, provide for the resolution authority's possibility to deviate from the marketing requirements as set out in Article 24(1) of Regulation

(EU) No 806/2014 and Article 39(1) of Directive 2014/59/EU.

- (136) In this particular case, the SRB considers that there is a material threat to financial stability arising from or aggravated by the failure or likely failure of the Institution and that full compliance with all those requirements would undermine the effectiveness of the sale of business tool in achieving the resolution objective specified in point (b) of Articles 14 (2) of Regulation (EU) No 806/2014 point (b) 31(2) of Directive 2014/59/EU, respectively as further recommended by EBA Guidelines on the sale of business tool¹⁰.
- (137) As mentioned above, in case of failure of the Institution, the SME lending function could not be replaced in a reasonable timeframe by the other market participants. [...]. In addition, the failure of the institution may create a spill over effect to the real economy, by means of indirect contagion. Therefore, the factual circumstances that are relevant for the risk that prolonged marketing the Institution under resolution may result in aggravating uncertainty and a loss of market confidence.
- (138) In this context, full compliance with the requirements specified in Article 39(1) of Directive 2014/59/EU would be likely to undermine the effectiveness of the sale of business tool, as per the liquidity drains expected during the process.
- (139) The following paragraphs provide the justification for the deviations from the standard marketing process.
- (140) With regard to the transparency requirement stipulated in point (a) of Article 39(2) of Directive 2014/59/EU, the preparation of a wide marketing process with complete access to due diligence entails a lengthy process. Having regard to the time limitation of the moratorium until 1 March 2022 at 23:59:59 pursuant to Decision of the SRB (**SRB/EES/2022/18**) (i.e., the suspension of the obligations measure under Article 33a of Directive 2014/59/EU), and the need for the SRB to adopt a final decision before the end of the moratorium, the marketing process was targeted at a specific number of potential bidders that were considered able to provide the necessary assurances.
- (141) With regard to the principle of non-discrimination established by point (b) of Article 39(2) of Directive 2014/59/EU, the need for rapid action would be jeopardised by the possibility of

¹⁰ EBA, Guidelines on factual circumstances amounting to a material threat to financial stability and on the elements related to the effectiveness of the sale of business tool under Article 39(4) of Directive 2014/59/EUEBA/GL/2015/04, 07.08.2015.

extending the marketing process to all potential participants in the market. Therefore, the Bank of Slovenia limited the process to those potential purchasers who may be more likely to ensure financial stability and that can provide the necessary assurances, and mainly liquidity, on a short time frame, are familiar with the Slovenian market, and have a business model that can facilitate the continuity of the critical function. By limiting the marketing process to such potential purchasers only, the Bank of Slovenia ensured the effectiveness of the sale of business tool in line with paragraph 5(b) of the EBA guidelines as there existed substantive reasons for including in the marketing process only a certain type of market participant.

- (142) The Bank of Slovenia, when aiming to maximise the price, had to take into account that the need of a rapid action will be in conflict with prolonged price negotiations. That is the case, particularly considering the need of continuance of critical functions and the confidence of depositors. Concretely, between the two offers received, the selected one provided for a maximised price. No advantages were provided to the bidders and the Bank of Slovenia requested binding and unconditional bids.
- (143) As regards the outcome of the marketing process, two bidders submitted binding offers for the acquisition of the shares of the Institution.

4.3.3.2 Selection of the preferred bid

- (144) Given that NLB d.d. submitted the binding and valid bid with the highest price, the SRB considers it appropriate to transfer the Shares to this bidder and thereby prevent an uncontrolled insolvency of the Institution that would have, inter alia, endangered the critical function and financial stability as referred in the public interest test section.
- (145) The price offered by NLB d.d. is considered to constitute commercial terms, which conform with the provisional Valuation 2, having regard to the circumstances of the case. In particular, the offered price is higher than the range suggested in the Valuation 2. It is recalled that the Valuation 2 is performed having regard to the disposal value that a market participant would be willing to pay under a resolution scenario. However, the Valuation 2 does not take into account any purchaser specific circumstances (such as synergies between the specific purchaser and the institution under resolution) that may inform the decision of a purchaser to provide for a price higher than the one included in the Valuation 2.
- (146) More relevant is that NLB d.d. sufficiently demonstrated that it can preserve the critical functions and contain the liquidity drain. The Bank of Slovenia confirmed that the selected bidder would be able to ensure the viability of the Institution.
- (147) The transaction may be subject to the assessment of the Competition Authority of the Republic of Slovenia (Slovenian Competition Protection Agency) pursuant to Articles 10, 11 and 44 to 53 of the Prevention of Restriction of Competition Act (Competition Law).
- (148) In light of the above, the bid submitted by NLB d.d., which was equal to EUR 5.108.504,32, constitutes commercial terms in line with the Valuation 2.

4.3.4 Application of sale of business tool

- (149) In the exercise of its rights and powers under Article 24(1)(a) of the Regulation (EU) No 806/2014 and in light of the bid submitted by the selected bidder, all shares issued by the Institution, namely 31.928.152 ordinary non-par value named dematerialised shares with the code VLBN, ISIN SI0021111008 (the “Shares”), will be transferred to, and the transfer shall be accepted by, the Nova Ljubljanska Banka d.d., Ljubljana, with LEI: 5493001BABFV7P27OW30, licensed as a credit institution. The transfer will take place free and clear of any rights or liens of any third party.
- (150) In light of the Purchaser’s Binding Offer, the consideration to be paid by the Purchaser will amount to EUR 5.108.504,32.
- (151) Upon instruction of the SRB, the ancillary expenses incurred by the SRB and the Bank of Slovenia, as per Article 22(6) of Regulation (EU) No 806/2014 and Article 37(7) of Directive 2014/59/EU as transposed into the national law, will be deducted from the positive consideration paid by the Purchaser.

4.3.5 Resolution powers to be exercised by the national resolution authority and implementation of the resolution scheme by that authority

- (152) When applying resolution measures and exercising the resolution powers, the resolution authority shall ensure that it takes all appropriate measures to ensure that the resolution action is taken in accordance with the principles laid down in Article 34 of Directive 2014/59/EU, as transposed into Article 28 ZRPPB-1. Moreover, in accordance with Article 18(9) of Regulation (EU) No 806/2014 and Article 63 onwards of Directive 2014/59/EU as transposed into (among others) Article 92 ZRPPB-1, the Bank of Slovenia may exercise the resolution powers provided thereto.
- (153) Without prejudice to the national law, the Bank of Slovenia will take all necessary measures and actions to ensure that the implementation of the above mentioned tools, including the removal of any obstacles to complete the sale of business to Nova Ljubljanska Banka d.d. under the Slovenian law.

HAS ADOPTED THIS DECISION:

Article 1

Valuation

For the purposes of the resolution of Sberbank banka d.d. with Legal entity identifier number (“LEI”) 529900NQF1UOZPME3N44 (“**Sberbank banka d.d.**”), the valuation pursuant to Article 20 of Regulation (EU) No 806/2014 shall be as set out in **Annexes 1 and 2** to this Decision.

Article 2

Placing the Institution under resolution

Sberbank banka d.d. shall be placed under resolution as set out in this Decision.

Article 3

Application of resolution tools

For the purposes of the resolution of Sberbank banka d.d., the sale of business tool in the form of transfer of shares shall be applied by the Bank of Slovenia as specified in the following Articles.

Article 4

Application of the sale of business tool

1. The SRB hereby decides that all the shares issued by Sberbank bank. d.d. (“**Shares**”) shall be transferred to, and the transfer shall be accepted by, the Nova Ljubljanska Banka d.d. (LEI: 5493001BABFV7P27OW30) (the “**Purchaser**”).
2. The transfer shall take place free and clear of any rights or liens of any third party. The SRB instructs the NRA that the transfer of the Shares shall not be subject to any conditions, other than regulatory approvals, and it shall not result in any liability of the SRB.
3. The Purchaser shall pay a consideration equal to EUR 5.108.504,32 to the secured account indicated by the Bank of Slovenia on closing of the transaction. The Bank of Slovenia shall pay the above consideration after deducting any expenses incurred by the SRB/Bank of Slovenia in connection with the use of the resolution tools and powers upon instruction by the Board.

Article 5

Informing and consulting employee representatives

In accordance with Article 15(4) of Regulation (EU) No 806/2014, the Bank of Slovenia shall inform and consult the employee representatives, where appropriate taking into consideration the Slovenian labour law as applicable given the circumstances and particularity of the case.

Article 6

Reporting

Without prejudice to the obligations pursuant to Article 28(1) of Regulation (EU) No 806/2014 the Bank of Slovenia shall, during the execution of the resolution scheme, inform the SRB on a frequent basis to be determined by the SRB in accordance with the requirements laid down in point (b) of the first subparagraph of Article 28(1) of Regulation (EU) No 806/2014.

Article 7

Addressee

1. This Decision is addressed to the Bank of Slovenia.
2. The Bank of Slovenia is instructed to take the necessary action to implement this Decision in accordance with the national law.

Done in Brussels, on 01 March 2022

For the Single Resolution Board,

The Chair

Elke KÖNIG