EUROPEAN CENTRAL BANK

BANKING SUPERVISION

[redacted]

Finanzmarktaufsicht (FMA)
Otto-Wagner-Platz 5
1090 Wien
AUSTRIA

ECB-SSM-2022-AT-3
Frankfurt am Main, 1 March 2022

Specific Instruction as regards two measures to be taken by the FMA with respect to Sberbank Europe AG

Dear Sir or Madam,

I am writing to notify you that the European Central Bank (ECB) has decided to instruct the FMA to adopt and notify without undue delay national supervisory decisions (hereinafter the 'national decisions') in respect of Sberbank Europe AG (hereinafter the 'Supervised Entity') in line with the Annex. The national decisions shall be notified before 1 March 2022, end of day, and shall apply at the latest as of the expiry of the currently imposed suspension of payment obligations unless the Single Resolution Board (SRB) adopts a resolution tool in respect of the Supervised Entity by that time.

1. Legal basis for the adoption of the Specific Instruction

1.1 The Governing Council of the ECB has adopted this Specific Instruction, on the basis of a draft proposal of the Supervisory Board, in accordance with Article 9(1), third subparagraph, of Council Regulation (EU) No 1024/2013[1]. Pursuant to this provision, the ECB may require, by way of instructions, national competent authorities to make use of their powers, under and in accordance with the conditions set out in national law, where this Regulation does not confer such powers on the ECB.

1.2 The ECB is the consolidating supervisor of the Supervised Entity, which is a significant institution supervised by the ECB. The Supervised Entity has subsidiaries in Slovenia and Croatia, which are also significant institutions supervised by the ECB within the meaning of Council Regulation (EU) No 1024/2013. In addition, the Supervised Entity has subsidiaries in Hungary and the Czech

1 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).

[redacted]

Republic, which are subject to supervision by the ECB as consolidating supervisor within the meaning of Article 111 of Directive 2013/36/EU[2], and subsidiaries outside the European Union.

2. Facts and assessment on which this Specific Instruction is based

On the basis of the facts and assessment included in the Annex, the ECB has concluded that the Specific Instruction is necessary and proportionate for the reasons laid down in the Annex.

3. Procedure

3.1 [redacted]

3.2 [redacted]

3.3 In the present case, the ECB has concluded, for the reasons set out in the Annex, that the Supervised Entity is in a rapidly deteriorating financial and economic development that is expected to place it into a situation where it will soon be unable to pay its liabilities as they fall due. To reduce the risk posed by this development to financial stability and to the interests of creditors, especially depositors, rapid action is needed, in particular since a further deterioration of the Supervised Entity's situation to the detriment of depositors could negatively impact public confidence in the banking system generally in a time of heightened tensions.

3.4 For this reason, the ECB concludes that the actions described in the Annex must be taken swiftly without further delays, [redacted]

4. General

4.1 [redacted]

4.2 Pursuant to Article 22(2) of Regulation (EU) No 468/2014 (ECB/2014/17), the FMA shall inform the ECB of the exercise of its powers to adopt the national decisions in accordance with this Specific Instruction without undue delay.

2 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

[redacted]

4.3 This Specific Instruction takes effect on the day of its notification to the FMA.

Yours sincerely,

DocuSigned by:

[redacted]

Petra SENKOVIC

Director General Secretariat

The Secretary of the Governing Council

[redacted]

ANNEX

Details of the Specific Instruction

1 In accordance with Article 9(1), third subparagraph, of Regulation (EU) No 1024/2013, as well as Article 22 of Regulation (EU) No 468/2014 (ECB/2014/17), in conjunction with Article 70(2), second sentence, no. 2 and no. 4 of the Austrian Banking Act (*Bankwesengesetz – BWG*), the ECB may address specific instructions to the FMA to appoint a government commissioner (Regierungskommissär) in a supervised entity and to completely or partly prohibit the continuation of business operations of a supervised entity.

Hereby, the FMA is instructed to adopt national decisions in order to:

- **Appoint a suitable government commissioner in the Supervised Entity,** [redacted];
- **Prohibit the Supervised Entity from the continuation of all business operations with immediate effect.** [redacted].

1. Facts on which this Specific Instruction is based

1.1 Background

2 Geopolitical tensions between Russia and Ukraine began to intensify in November 2021 and escalated significantly in February 2022, with the subsequent invasion of Russia into Ukraine on 24 February 2022. As a result, the European Union and the US imposed extensive economic sanctions against Russia. [3,4]

3 Following the increase of geopolitical tensions and even before any sanctions were imposed, the Supervised Entity experienced a significant reputational crisis, as a result of the relationship with its parent, which is a Russian state-owned bank. In addition, the uncertainty about possible severe sanctions (and countersanctions) and their potential impacts on the Supervised Entity triggered significant outflows and resulted in a significant deterioration of the liquidity position of the Supervised Entity.

3 On 23 February 2022, the European Union agreed on a first package of sanctions, including asset freezes and travel bans on 27 individuals and entities and sanctions against the members of the Russian state Duma that voted for recognition of the two territories. In addition, the Russian government was restricted in its ability to raise money on EU financial markets and economic relations with the areas of Donetsk and Luhansk were restrained.

4 On 22 February 2022, US President Biden announced economic sanctions targeting two key Russian financial institutions, the Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB) and Promsvyazbank Public Joint Stock Company (PSB), and five Russian oligarchs as well as additional restrictions on Russian sovereign debt.

[redacted]

4 Furthermore, on 24 February 2022, the Supervised Entity became the subject of direct sanctions by the Office of Foreign Assets Control (OFAC) of the US Treasury Department, which required all US 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 institution subsidiaries. Payments that Sberbank attempts to process in US dollars for its clients — with examples ranging from technology to transportation — will be disrupted and rejected once the payment hits a US financial institution. The above sanctions have significantly severed the Supervised Entity's access to US correspondent accounts, direct or otherwise, and the clearance of any transactions via US institutions. Additional sanctions were imposed by the European Union on 25 February 2022. Although they do not directly target the Supervised Entity (it was not put on the EU sanction list), the latest EU sanctions further contribute to the reputational crisis of the Supervised Entity, as a result of the relationship with its Russian parent.[5]

5 In accordance with the Supervised Entity, there were countermeasures imposed by the Russian Federation, as the Central Bank of the Russian Federation prohibited Sberbank of Russia to transfer any foreign currency denominated funds in favour of/to any banking subsidiary located in any foreign jurisdiction/unions of jurisdictions, whose state authorities introduced sanctions against Russian legal persons and/or assets and/or officials thereof.

1.2 Developments of the liquidity situation of the Supervised Entity

6 Following the intensification of the geopolitical tensions between Russia and Ukraine and the imposition of sanctions by the US and EU authorities, the Supervised Entity has suffered a deteriorating liquidity situation. Particularly, the consequences of the imposed sanctions have been threefold: i) a reputational impact which has triggered a wave of deposit withdrawals in the Supervised Entity; ii) the fact that the Supervised Entity had to provide support to its subsidiaries in Czech Republic and Croatia, which also experienced significant outflows; and iii) the loss of access to USD correspondent banking and the loss of access to USD payments. Despite the fact that the US sanction measure will take effect on 26 March 2022, the impact in the behaviour of depositors and potential market counterparts is being fully manifested without any indication of potential reversal.

7 In more detail, during the period since 23 February 2022, the Supervised Entity sustained EUR [redacted] net deposit outflows, which corresponds to [redacted]% of its total deposit base as of 23 February 2022. Most of these outflows were related to [redacted]. In particular, as of 25 February, [redacted] were reduced from EUR [redacted] to EUR [redacted].

8 At the same time, most of the Supervised Entity's correspondent banks have ceased their business relations, particularly in USD which has become unavailable to swap into other currencies for the Supervised Entity. While the impact on the Supervised Entity has been contained on a consolidated level, as the group led by the Supervised Entity is self-funded in USD, on solo level the Supervised Entity has USD needs.

5 The second package of EU sanctions included: (1) the prohibition of deposits over EUR 100000 per credit institution (with some exceptions), (2) prohibition of access to EU CSDs for securities issued after 12 April 2022, (3) prohibition to sell EUR denominated securities issued after 12 April 2022.

[redacted]

9 In addition, due to the risk of falling under the sanction regime, financial institutions outside the Supervised Entity's group have no interest to engage in funding relations with the Supervised Entity, which practically cuts it off from external interbank funding. While this channel does not represent a material funding source for the bank, the fact that it became unavailable demonstrates the significant reputational crisis the Supervised Entity is facing.

10 The Supervised Entity had prepared for the possibility that it could come under intensified sanctions and had taken several pre-emptive measures, including: (i) taking actions in order to de-risk its exposures with Russian connection, (ii) reducing its USD exposures, and (iii) increasing its cash reserves. Moreover, following the deterioration of the liquidity situation of the Supervised Entity's group, the Supervised Entity took action [redacted] and requested from its parent company Sberbank of Russia [redacted] to the Supervised Entity, [redacted].

11 On 25 February 2022, the Supervised Entity convened its group Emergency Response Team (ERT), which decided to (i) activate the group recovery plan; (ii) implement the recovery option "Provision of additional funding by shareholder (SBRF)" (see paragraph 13) and the recovery options "asset transfer of existing performing loan portfolio within Sberbank Group" and "attraction of additional retail deposits"; (iii) trigger the respective communication according to the recovery plan escalation procedure.

12 On 25 February 2022, Sberbank of Russia informed the Supervised Entity that the requested [redacted] cannot be provided as the Central Bank of the Russian Federation prohibited Sberbank of Russia from transferring any foreign currency denominated funds in favour of/to any banking subsidiary located in any foreign jurisdiction/unions of jurisdictions, whose state authorities introduced sanctions against Russian legal persons and/or assets and/or officials thereof.

13 The actions taken by the Supervised Entity mentioned above to address the increasing liquidity outflows faced by the group did not manage to restore the counterbalancing capacity of the Supervised Entity, which has been reduced since 23 February 2022 from EUR [redacted] to EUR [redacted], of which EUR [redacted] was on the central bank account. In terms of probable liquidity evolution, if the Supervised Entity 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 [redacted].

14 Moreover, the Supervised Entity has limited additional options to restore its liquidity position. Regarding the possibility to implement additional liquidity recovery measures identified by the Supervised Entity within its recovery plan, [redacted] according to the decision of the Central Bank of the Russian Federation, Sberbank of Russia is prohibited from transferring any foreign currency denominated funds in favour of any subsidiaries of Sberbank of Russia located in any foreign jurisdiction whose state authorities introduced sanctions against Russian legal persons, assets or officials. [redacted]

6 [redacted]

[redacted]

[redacted] Overall, no measure contained in the recovery plan which is still available under the current circumstances, individually taken or in conjunction, would have sufficient impact on the liquidity position of the Supervised Entity in the timeframe necessary to address the Supervised Entity's liquidity needs.

15 [redacted]

16 On 26 February 2022, the Supervised Entity notified the ECB and the FMA pursuant to Art 73(1) para 5 BWG and Art 114(1) Austrian Bank Recovery and Resolution Act (BaSAG) about the occurrence of circumstances which make it clear to a prudent director that the ability to fulfil obligations is endangered.

17 On 27 February 2022, the ECB assessed that the Supervised Entity and its two subsidiaries in the SSM, Sberbank d.d. in Croatia and Sberbank banka d.d. in Slovenia, are failing or likely to fail owing to a deterioration of their liquidity situation. The ECB made this assessment after determining that in the upcoming days, the Supervised Entity is likely to be unable to pay its debts or other liabilities as they fall due.

18 On 27 February 2022 the SRB (SRB/EES/2022/16) instructed the FMA as the national resolution authority (NRA) to notify a decision to the Supervised Entity including the measures to:

[redacted]

- Suspend all payment or delivery obligations pursuant to any contract to which the Supervised Entity is a party, including eligible deposits according to the definition of Article 2(1) point (4) of Directive 2014/49/EU as amended by 2019/879/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 as amended by 2019/879/EU;
- restrict all secured creditors of the Supervised Entity from enforcing security interests in relation to any of the assets of the Supervised Entity for the same duration, in which case the national provisions transposing Article 70(2), (3) and (4) of Directive 2014/59/EU as amended by 2019/879/EU shall apply; and to
- suspend all the termination rights of any party to a contract with the Supervised Entity for the same duration, in which case the national provisions transposing Article 71(2) to (8) of Directive 2014/59/EU as amended by 2019/879/EU shall apply.

19 On 28 February 2022, the FMA as the NRA notified an implementing decision (FMA-ABB23 5492/0001-AWV/2022) pursuant to Art 29(1) of Regulation 2014/806/EU to the Supervised Entity. The FMA decision took effect from that day until 1 March 2022, end of day.

20 The Supervised Entity has subsidiaries in Croatia (Sberbank d.d.) and Slovenia (Sberbank banka d.d.), which are supervised by the ECB. Moreover, the Supervised Entity has also subsidiaries in other EU Member States outside the banking union, namely in Czech Republic (Sberbank CZ, a.s.) and Hungary (Sberbank Hungary Ltd.). Additionally, the Supervised Entity has the following subsidiaries outside the EU: in Bosnia and Herzegovina (Sarajevo and Banja Luka) (Sberbank BH d.d. Sarajevo and Sberbank a.d. Banja Luka) and in Serbia (Sberbank Srbija a.d. Beograd). Several of the subsidiaries of the Supervised Entity have experienced acute liquidity outflows in the past days. Despite the decentralised funding structure of the Supervised Entity's group, subsidiaries are dependent on the Supervised Entity for the provision of additional liquidity in case of need. In particular, the subsidiary in Czech Republic has experienced deposit outflows of EUR [redacted] (approx. [redacted]% of its deposits, [redacted] on 24 and 25 February and was supported by the Supervised Entity with EUR [redacted] of liquidity. Despite this support, as of close of business on 25 February the counterbalancing capacity of the Czech subsidiary amounted to only EUR [redacted]. The subsidiary [redacted] and closed all branches in the course of the day [redacted] In addition, the Croatian subsidiary also experienced outflows of EUR [redacted] (approx. [redacted]% of its deposits, [redacted] since 24 February 2022 and was supported by the Supervised Entity with EUR [redacted] of liquidity. The counterbalancing capacity of the Croatian subsidiary was reduced to EUR [redacted] on 25 February, while the subsidiary estimates that at least further EUR [redacted] outflows will take place in the upcoming days. Liquidity outflows were also reported in the other subsidiaries of the Supervised Entity of in total [redacted]

21 Given the operating structure of the group and the dependence of the subsidiaries on the Supervised Entity for liquidity, the deterioration of the liquidity situation at subsidiary level is contributing to the worsening of the liquidity situation for the Supervised Entity. Moreover, the Supervised Entity and its

[redacted]

subsidiaries are also dependent upon each other in terms of public perception and reputation. Thus, a failure of a subsidiary is expected to have a further impact on the reputation of the Supervised Entity.

22 Overall, given the increased liquidity outflows that the Supervised Entity is facing, which are expected to continue, the absence of any credible additional liquidity generating measures in the short term and the additional liquidity needs of the subsidiaries which the Supervised Entity will be asked to cover, the Supervised Entity is expected to be unable in the near future to pay its debts or other liabilities as they fall due.

2. Assessment

19 Based on the facts and submissions summarised in Section 1, the ECB has concluded that there exists a danger to the fulfilment of the credit institution's obligations to its creditors, in particular, to the security of assets entrusted to the credit institution, within the meaning of Article 70(2) of the Austrian Banking Act (*Bankwesengesetz – BWG*).

20 The ECB also concludes that it is likely that the Supervised Entity will be subject to either resolution proceedings in accordance with Regulation (EU) No 806/2014, or insolvency proceedings in accordance with the Austrian Insolvency Code (Insolvenzordnung – IO), or receivership (*Geschäftsaufsicht*) in accordance with Article 83 of the BWG, depending on what the authorities or courts competent for these matters may decide.

21 The powers and restrictions applicable under these proceedings will, however, not become immediately available. This creates a risk of a further outflow of liquidity and a deterioration of the Supervised Entity's asset base in the meantime. This would act to the detriment of the Supervised Entity's creditors, especially depositors, whose recoverable claims would be diminished.

22 For these reasons, the ECB has concluded that it is necessary to take precautionary measures to prevent such developments until there is clarity on the future of the Supervised Entity.

23 The appointment of a government commissioner (Article 70(2), second sentence, no. 2 of the BWG) and a prohibition of business (Article 70(2), second sentence, no. 4 of the BWG) are suitable measures to achieve this objective. They allow, from a supervisory perspective, to bring the further deterioration of the Supervised Entity's liquidity and asset base to a halt and thereby protect the available basis for potential subsequent proceedings.

24 The ECB has also concluded that there are no less intrusive measures available to achieve this objective to the same extent. In particular, a limitation on the solicitation of new business would have little effect on the Supervised Entity, since its situation is largely driven by deposit withdrawals from it and its subsidiaries, which are beyond the Supervised Entity's control. Similarly, a requirement for the Supervised Entity to raise liquidity would be unlikely to be effective since, as described in Section 1, there are no options available for the Supervised Entity to do so.

25 The ECB has also balanced the Supervisory Entity's interest in remaining under its own management and free to conduct its business against the public interest in preventing a destabilisation of the financial markets and in the protection of creditors, especially depositors; these are important objectives of Union legislation in the field of prudential supervision, as becomes evident from Recital 47 of Directive 2013/36/EU. The ECB has concluded that this public interest outweighs the Supervised Entity's private interest. In arriving at this conclusion, the ECB has also taken into account that the

Supervised Entity's freedom to operate freely in the market have already, as a matter of fact, been severely restricted by the market reactions described in Section 1.

26 For these reasons, the ECB concludes that the appointment of a government commissioner and the imposition of a business restrictions are proportionate.