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Open letter to Jean-Claude Juncker, President of the European Commission, and Mario Draghi, President of the European Central Bank

Brussels, 11 July 2016

Dear President, Jean-Claude Juncker,

Dear President, Mario Draghi,

Alarmed by the concerns expressed by Mr. Draghi in his letters to Mr. Juncker and the Slovenian State Prosecutor General concerning the ongoing investigation of the bail-in measures in December 2013 and the role of Bank of Slovenia in these measures, and as a Slovenian MEP, I feel the need to convey to You some details which I have been warned about and that should elucidate this matter, and hopefully be of use to You in Your further actions. I believe that following facts are important to know.

1. In November 2013, both Slovenian systemic commercial banks (NLB and NKBM) have published their reports as of 30 September 2013, reporting positive equity (NLB 835 M€, NKBM 246 M€) and regulatorily inadequate, yet clearly positive CET1 (NLB 6.9% consolidated / 8.6% unconsolidated, NKBM 6.7% / 7.2%). These reports are still published, and have never been retracted or otherwise denied (furthermore, see point 5).
2. Following the publicly disclosed information, the correspondence in September 2013 between Franck Dupont, then a member of the C-5 subunit of DG COMP and Mitja Mavko, then state secretary at the Slovenian Ministry of Finance revealed, that »enhanced burden sharing« of all NLB's subordinated bonds would be needed to become a positive decision of SA to NLB. While »burden sharing« is an official term used in the EC Banking Communication, »enhanced burden sharing« could be understood as a prearranged codeword for a wipeout without compensation, i.e., the harshest possible interpretation/implementation of the EC Banking Communication.
3. A wipeout of subordinated debt would clearly require a preceding wipeout

without compensation to be performed on the NLB's shares, which in turn would require NLB's share equity to be assessed as negative.

4. Despite the fact that NLB's equity was positive (both reported as of 30 June 2013, and also later as of 30 September 2013), proposal for an enhanced burden sharing led to a still-top-secret re-valuation arranged by the Bank of Slovenia (BoS), yielding a non-standard assessment of equity as of 30 September 2013 in NLB and NKBM just sufficiently negative for a wipeout of all their outstanding subordinated debt instruments: -318 M€ in NLB (sub debt of 265 M€) and -67 M€ in NKBM (sub debt of 64 M€). BoS issued decrees of wipeout of all NLB's and NKBM's sub debt based on these re-valuations, and although they remain classified, it was revealed in Slovenian press that they contain disclaimers about being performed on a sample determined specifically by BoS and according to instructions by BoS, being incompatible with IFRS, and bearing no legal or economic responsibility for the companies that performed them. It was also later revealed that although the companies were referred to by BoS as »Deloitte« and »Ernst & Young«, it was not the auditing companies of that name who performed the valuations, but their daughter consulting companies not bound by the auditing and reporting standards.
5. In March 2014, three months after the wipeout, official representatives of both NLB and NKBM publicly stated that their equity was positive as of 30 September 2013, and that any questions regarding why, despite positive share equity, a wipeout of these shares as well as subordinated bonds was performed, should be addressed to BoS alone.

In my opinion, these facts cast a strong doubt on the regularity of the bail-in as performed in December 2013 in Slovenia. Money from Slovenian taxpayers was used for the recapitalisation of NLB. Today few years later it is still a mystery what went wrong in our banking system and who is responsible for that. I believe people have the right to know the truth if the procedures were not conducted as they should have been.

The response of Mr. Draghi last week was not the first one of its kind. Namely, on 5 March 2015, almost immediately after the Slovenian National Bureau of Investigation officially confirmed it started an investigation, the EC's Vice-President Mr. Valdis Dombrovskis addressed a letter to the Slovenian Prime Minister, reassuring him that the bail-in as performed in Slovenia was not to be doubted, as it *»ensured compliance with EU legislation and state aid rules«*, and furthermore calling upon him to *»safeguard the independence of the Bank of Slovenia and its Governor«* (letter Cab 07/JC/an (2015) sv 1073216).

Last week, both the Slovenian National Bureau of Investigation and the Slovenian Public Prosecutor's Office have officially stated that the evidence gathered in the

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investigation, so far limited to the largest Slovenian bank NLB, provided substantiation of the allegations of BoS's wrongdoing. Moreover, the investigating magistrate considered the gathered evidence sufficient to authorize a seizure of specific documents directly related to the investigated case that BoS consistently declined to provide voluntarily. In our view, this should elicit Mr. Dombrovskis' official apology for prejudging the »compliance with legislation« of the Slovenian bail-in.

But instead, another letter, in fact two, written on 6 July 2016 by Mr. Draghi to the EC President and the Slovenian State Prosecutor General, can be viewed as a continuation of interference of the executive branch of the EU with the judicial process at the national level in Slovenia.

So, I call upon You to reassess the events, both those of December 2013 and these of the recent days, in the light of the presented facts. Perhaps, instead of rushing to conclusions about the ongoing investigation in Slovenia, You could seize this opportunity to start Your own in-depth investigation of the actions leading to the December 2013 »enhanced burden sharing« in Slovenia.

Your response to this letter is much appreciated.

Yours faithfully,



Romana Tomc MEP