

In the attention of

Mr. Valdis Dombrovskis,
Vice-President of the European Commission

European Commission
Rue de la Loi / Wetstraat 200
1049 Brussels, Belgium
cab.dombrovskis@ecb.europa.eu

Brussels, 31 October 2019

Subject: Initiative on a draft law regarding the compensation of expropriated investors of Slovenian banks in 2013-2014

Dear Mr. Dombrovskis,

I am writing to you in my capacity of Managing Director of BETTER FINANCE, the European Federation of Investors and Financial Services Users. We are the public interest non-governmental organisation advocating and defending the interests of European citizens as financial services users at European level to lawmakers and the public in order to promote research, information and training on investments, savings and personal finances. BETTER FINANCE counts 38 member organisations representing more than 4 million individual members altogether.

As part of our mission, we collaborate and support our member organisations' endeavours by closely monitoring various events, developments and national legal frameworks concerning the promotion and protection of individual investors' rights in EU Member States.

I am contacting you on this occasion with regards to the **process of remedying the unconstitutional expropriation of individual investors in Slovenian banks** (as evidenced by the Slovenian Constitutional Court's decision no. U-I-295/13-260, dated 19 October 2016) and compensating the affected investors in question. As you may know, bail-in decisions regarding six Slovenian banks, taken between 2013 and 2014, have written off subordinated bonds' claims of Slovenian investors worth €582 million and equity securities worth €381 million.¹

Our Slovenian member organisation, the Pan-Slovenian Investors' & Shareholders' Association (VZMD), has been actively advocating for compensating the affected individual investors and proposed to the National Parliament of Slovenia a draft law, written by own motion, that would regulate this process of compensation in due compliance with Union primary and secondary law.

Previously, the National Parliament of Slovenia debated several draft laws that tackled the same issue, with regards to which the European Central Bank (hereinafter "ECB") has issued several opinions (see ECB Opinions CON/2017/16, CON/2017/41, CON 2019/13, CON/2019/20 and CON/2019/26), underlining a number of observations, in particular **the non-observance of the monetary financing prohibition enshrined in Article 123 of the Treaty on the Functioning of the European Union** (hereinafter "TFEU").

¹ Own research based on the World Bank Group report, p. 61: <http://pubdocs.worldbank.org/en/120651482806846750/FinSAC-BRRD-and-Bail-In-CaseStudies.pdf>

The common ground of the abovementioned drafts discussed in the National Parliament of Slovenia was the requirement that the National Bank of Slovenia (Banka Slovenije) must bear the costs of compensating for the damages incurred to individual investors. In this light, BETTER FINANCE and VZMD have shared the ECB's reservations.

As a consequence, **VZMD prepared their own draft law** regarding the compensation of the expropriated investors in Slovenian banks (hereinafter "the Draft") with the particularity that **it does not entail monetary financing**.

The Draft significantly differs from the previous law proposals and is based on the following two premises:

- The banks subjected to extraordinary measures imposed by the Bank of Slovenia (with the exception of Probanka and Factor banka) are still in business and are making profits, and
- The assets of the banks subjected to the Bank of Slovenia's extraordinary measures have been transferred to the Bank Assets Management Company (DUTB d.d.).

The Draft consequently provides for the compensation to be realized through the funding of the banks themselves and through the funding of DUTB d.d. (the Bank Assets Management Company).

We firmly believe that the Draft proposed by VZMD is compliant with the monetary financing prohibition laid down in Article 123 TFEU and does not undermine the Bank of Slovenia's independence in accordance with Article 130 of the said Treaty.

However, VZMD cannot ask the ECB to issue an opinion on this draft law – that would fall under its fields of competence – as it would come against the word and spirit of Article 127, paragraph 4, second indent, of TFEU, read in conjunction with the provisions of Article 5, paragraph 2, of the Treaty on European Union (hereinafter "TEU").

In this light, and considering the role of the European Commission as "guardian of the Treaties" – enshrined in Article 17 TFEU - and the provisions set forth in the precited Article 127 and in Article 132, first paragraph, and Article 282 of TFEU, we are kindly asking the European Commission to request to the ECB to issue an opinion on this Draft law proposal of VZMD.

This is all the more important as the Bank Recovery and Resolution Directive² requires Member States to observe the "no creditor worse off" principle (Article 34(1)(g) BRRD) and transpose or adopt at national level measures to implement this provision, which has been so far ineffective. In BETTER FINANCE's opinion in the absence of a viable proposal from national competent authorities, the Draft proposal put forward by the national investor protection association, VZMD, should be considered as an alternative in observing the abovementioned principle.

² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance, OJ L 173, 12.6.2014, p. 190–348.

Moreover, **Priority Action no. 7** of the revised Capital Market Union Action Plan specifies that “*A stable investment environment [...] should ensure greater transparency on the effective protection of EU investor rights*”.³ We firmly believe that this action falls within the scope and purpose of the action plan proposed by the European Commission and kindly urge you to pursue it.

Attached to this letter you will find the Draft proposal in original language and an English translation provided by courtesy of the proponent, VZMD.

I sincerely hope that you will understand the urgency and issues at stake for retail investor protection, I am looking forward to your response.

Yours faithfully,

Guillaume PRACHE, Managing Director



C/c: Mr. Olivier Guersent, Director-General of European Commission's Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Attachment:

- The Draft (SI version);
- The Draft (EN version).

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-Term Review of the Capital Markets Union Action Plan, Brussels 8.6.2017, COM(2017)292 final, p. 16.