



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 162/20**  
Luxembourg, 17 December 2020

Judgment in Case C-316/19  
Commission v Slovenia

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**By unilaterally seizing documents that are part of the archives of the ECB, Slovenia failed to fulfil its obligation to respect the principle of the inviolability of the archives of the Union.**

*Furthermore, by failing to cooperate properly with the ECB to eliminate the unlawful consequences of that infringement, Slovenia also failed to fulfil its obligation of sincere cooperation with regard to the European Union*

On 6 July 2016, the Slovenian authorities searched the premises of the Banka Slovenije (Central Bank of Slovenia) and seized paper and electronic documents there. The documents seized by those authorities included all communications sent through the email account of the Governor at that time, all the electronic documents on his workspace computer and on his laptop concerning the period between 2012 and 2014, irrespective of their content, and documents relating to that period that were in the Governor's office. Those interventions took place in connection with an investigation against certain members of staff of the Banka Slovenije, including that governor, on suspicion of abuse of power and of official functions in connection with the restructuring, in 2013, of a Slovenian bank. Although the Banka Slovenije argued that those measures infringed the principle of the inviolability of the 'archives of the European Central Bank (ECB)' resulting from the Protocol on the privileges and immunities of the European Union<sup>1</sup> and requiring that any access by the national authorities to those archives be subject to the express agreement of the ECB, the Slovenian authorities continued with that search and seizure of documents without involving the ECB.

In that context, the ECB explained to the Slovenian authorities that its archives included not only the documents which it had drawn up itself in the performance of its tasks but also the communications between it and national central banks which were necessary for the performance of the tasks of the European System of Central Banks (ESCB) or of the Eurosystem and the documents drawn up by those central banks for the performance of the tasks of the ESCB or of the Eurosystem. The ECB also maintained that, subject to certain conditions, it would not refuse to waive the protection enjoyed by the documents seized by the Slovenian authorities.

Considering, first, that the unilateral seizure of the documents at issue constitutes an infringement of the principle of the inviolability of the archives of the ECB<sup>2</sup> and, secondly, that the Slovenian authorities, contrary to what is required by the obligation of sincere cooperation,<sup>3</sup> had not engaged in constructive discussion to eliminate the unlawful consequences of the infringement of that principle, the Commission brought an action for failure to fulfil obligations against Slovenia before the Court of Justice.

In its judgment, the Court, sitting as the Grand Chamber, **upholds the Commission's action and declares that the infringements alleged took place in their entirety.** This case has thus given the Court the opportunity to state the conditions applicable to the protection of the archives of the Union with regard to a unilateral seizure of documents forming part of those archives made by the

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<sup>1</sup> Protocol (No 7) on the privileges and immunities of the European Union (OJ 2016 C 202, p. 266).

<sup>2</sup> Article 343 TFEU; Article 39 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (OJ 2016 C 202, p. 230); Articles 2 and 22 of the Protocol on privileges and immunities.

<sup>3</sup> Article 4(3) TEU; Article 18 of the Protocol on privileges and immunities.

authorities of a Member State in places other than the buildings and premises of the European Union and, in particular, the conditions under which a finding of infringement of the principle of the inviolability of the archives of the ECB may be made.

#### Findings of the Court

– The concept of ‘archives of the ECB’

The Court points out that, since the ECB is an EU institution, **the principle of the inviolability of the archives of the Union applies to its archives.** In that regard, the Court states that **the archives of the Union cover the archives of an EU institution such as the ECB even if they are stored in places other than the buildings and premises of the European Union.** <sup>4</sup>

In this connection, the Court observes that the ECB and the national central banks of the Member States constitute the ESCB and that the monetary policy of the Union is conducted by the ECB and the national central banks of the Member States whose currency is the euro (including the Banka Slovenije), those banks constituting the Eurosystem. <sup>5</sup> The governors of those banks, including the Governor of the Banka Slovenije, are members of the Governing Council of the ECB <sup>6</sup> and participate in the adoption of the decisions necessary to perform the tasks of the ESCB. The primary objective of the ESCB is to maintain price stability. To that end, the basic tasks to be carried out through the ESCB include, inter alia, that of defining and implementing the monetary policy of the Union,<sup>7</sup> which requires close cooperation between the ECB and the national central banks. <sup>8</sup> **In this system, the national central banks and their governors have a hybrid status inasmuch as, although they constitute national authorities, they are authorities acting under the ESCB,** which is constituted by those national central banks and the ECB.

The Court points out that the correct functioning of the ESCB and of the Eurosystem and the proper performance of their tasks require close cooperation and permanent exchange between the ECB and the national central banks which participate in those systems, which necessarily means that documents linked to the performance of the tasks of the ESCB and of the Eurosystem are in the possession not only of the ECB but also of the national central banks.

In those circumstances, the Court takes the view that **such documents are covered by the concept of ‘archives of the ECB’ even if they are held by the national central banks and not by the ECB itself.**

– The infringement of the principle of the inviolability of the archives of the ECB

The Court notes that, in the present case, an infringement of the principle of the inviolability of the archives of the ECB may only be found if, first, a seizure decided upon unilaterally by the national authorities of documents belonging to the archives of the Union may constitute such an infringement and, secondly, the documents seized in fact included documents which must be considered to form part of the archives of the ECB.

In the first place, the Court finds that the concept of ‘inviolability’ means protection against any unilateral interference on the part of the Member States. That is confirmed by the fact that that concept is described as protection against any search, requisition, confiscation or expropriation measures. Therefore, the Court holds that **the unilateral seizure by the national authorities of documents belonging to the archives of the Union constitutes an infringement of the principle of the inviolability of those archives of the Union.**

In the second place, the Court recalls that it is for the Commission, in an action for failure to fulfil obligations, to prove the existence of the alleged infringement. It must provide the Court with the

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<sup>4</sup> Articles 1 and 2 of the Protocol on privileges and immunities.

<sup>5</sup> Article 282(1) TFEU; Articles 1 and 14.3 of the Protocol on the ESCB and the ECB.

<sup>6</sup> Article 283(1) TFEU; Article 10.1 of the Protocol on the ESCB and the ECB.

<sup>7</sup> Article 127(2) TFEU.

<sup>8</sup> Article 9.2 of the Protocol on the ESCB and the ECB.

information necessary for it to determine whether the infringement is made out, and the Commission may not rely on any presumption for that purpose. In the present case, the Commission has acknowledged that it did not have specific information as to the nature of the documents at issue seized by the Slovenian authorities, such that it was not in a position to determine whether a subset of those documents had to be regarded as forming part of the archives of the Union.

However, **having regard to the considerable number of documents at issue seized and to the duties that the governor of a national central bank, such as the Banka Slovenije, is called upon to carry out within the framework of the Governing Council of the ECB, and therefore within the framework of the ESCB and the Eurosystem, the Court considers it to be established that the documents seized by the Slovenian authorities must have included documents which were part of the archives of the ECB.** It also holds that, **by seizing such documents unilaterally, the Slovenian authorities infringed the principle of the inviolability of the archives of the ECB.**

In that context, the Court notes that the Protocol on privileges and immunities and the principle of the inviolability of the archives of the Union preclude, in principle, the seizure of documents by the authority of a Member State where those documents are part of those archives and the institutions have not agreed to such a seizure. Nevertheless, that authority has the option of requesting the EU institution concerned to waive the protection enjoyed by the documents concerned, subject to conditions if necessary and, in the event that access is refused, of applying to the EU judicature for a decision of authorisation forcing that institution to give access to its archives. Furthermore, the protection of the archives of the Union does not preclude in any way the seizure by the national authorities at the premises of a Member State's central bank of documents which do not belong to the archives of the Union.

– Failure to comply with the obligation of sincere cooperation

After recalling its settled case-law relating to the scope of the obligation of sincere cooperation, the Court observes that **by failing to have allowed the ECB, by the end of the period fixed in the reasoned opinion, to identify, among the documents seized on 6 July 2016, those linked to the performance of the tasks of the ESCB and of the Eurosystem and by failing to have returned those documents to the Banka Slovenije, the Slovenian authorities failed to fulfil their obligation of sincere cooperation with the ECB.** That conclusion is not affected by the fact that the Prosecutor-General requested the ECB to propose criteria to him which could identify those of the documents seized by the Slovenian authorities which, according to the ECB, were part of its archives. Even after receiving that proposal, the Slovenian authorities did not take measures to enable the ECB to identify the documents linked to the performance of the tasks of the ESCB and of the Eurosystem which had been seized. Furthermore, those authorities did not accede to the ECB's request to return to the Banka Slovenije all the documents which they considered to be of no relevance for the purposes of the investigation at issue.

In that context, the Court considers that the fact that the Slovenian authorities took measures to ensure that the confidentiality of those documents was maintained does not cast doubt on the finding that, in the present case, those authorities failed to fulfil their obligation of sincere cooperation with the ECB.

Accordingly, as regards the period after the contested seizure, the Court holds that **the Slovenian authorities failed to fulfil their obligation of sincere cooperation with the ECB.**

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been

notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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