



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

17 December 2020 *

(Failure of a Member State to fulfil obligations – Article 343 TFUE – Privileges and immunities of the European Union – Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB) – Article 39 – Privileges and immunities of the ECB – Protocol on the privileges and immunities of the European Union – Articles 2, 18 and 22 – Principle of the inviolability of the archives of the ECB – Seizure of documents at the premises of the Central Bank of Slovenia – Documents connected to the performance of the tasks of the ESCB and of the Eurosystem – Article 4(3) TEU – Principle of sincere cooperation)

In Case C-316/19,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 16 April 2019,

European Commission, represented by L. Flynn and B. Rous Demiri, acting as Agents,

applicant,

supported by:

European Central Bank (ECB), represented by K. Kaiser, C. Zilioli, F. Malfrère and A. Šega, acting as Agents, and by D. Sarmiento Ramírez-Escudero, abogado,

intervener,

v

Republic of Slovenia, represented by V. Klemenc, A. Grum, N. Pintar Gosenca and K. Rejec Longar, acting as Agents,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, L. Bay Larsen, N. Piçarra and A. Kumin, Presidents of Chambers, T. von Danwitz, C. Toader, M. Safjan, D. Šváby, P.G. Xuereb (Rapporteur), L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: J. Kokott,

Registrar: M. Longar, Administrator,

having regard to the written procedure and further to the hearing on 22 June 2020,

* Language of the case: Slovenian.

after hearing the Opinion of the Advocate General at the sitting on 3 September 2020,
gives the following

Judgment

- 1 By its application, the European Commission seeks a declaration from the Court of Justice that, by unilaterally seizing at the premises of the Banka Slovenije (Central Bank of Slovenia) documents connected to the performance of the tasks of the European System of Central Banks (ESCB) and of the Eurosystem and by failing to cooperate sincerely with the European Central Bank (ECB) on that matter, the Republic of Slovenia has failed to fulfil its obligations under 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; ‘the Protocol on the ESCB and the ECB’), Articles 2, 18 and 22 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2016 C 202, p. 266; ‘the Protocol on privileges and immunities’) and Article 4(3) TEU.

Legal context

The Protocol on the ESCB and the ECB

- 2 Article 1 of the Protocol on the ESCB and the ECB reads as follows:

‘In accordance with Article 282(1) [TFEU], the [ECB] and the national central banks shall constitute the [ESCB]. The ECB and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

The ESCB and the ECB shall perform their tasks and carry on their activities in accordance with the provisions of the Treaties and of this Statute.’

- 3 Article 8 of the Protocol states:

‘The ESCB shall be governed by the decision-making bodies of the ECB.’

- 4 Article 9.2 of the Protocol provides:

‘The ECB shall ensure that the tasks conferred upon the ESCB under Article 127(2), (3) and (5) [TFEU] are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.’

- 5 Under Article 9.3 of the Protocol:

‘In accordance with Article 129(1) [TFEU], the decision making bodies of the ECB shall be the Governing Council and the Executive Board.’

- 6 Article 10.1 of the Protocol on the ESCB and the ECB provides as follows:

‘In accordance with Article 283(1) [TFEU], the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro.’

7 Article 14.3 of that protocol is worded as follows:

‘The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.’

8 Article 39 of that protocol provides:

‘The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the [Protocol on privileges and immunities].’

The Protocol on Privileges and Immunities

9 The preamble to the Protocol on privileges and immunities reads as follows:

‘Considering that, in accordance with Article 343 [TFEU] and Article 191 [EAEC], the European Union and the [European Atomic Energy Community] shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks.’

10 Article 1 of that protocol provides:

‘The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.’

11 Article 2 of the Protocol provides:

‘The archives of the Union shall be inviolable.’

12 Under Article 18 of the Protocol:

‘The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.’

13 The first paragraph of Article 22 of the Protocol on privileges and immunities provides as follows:

‘This Protocol shall also apply to the [ECB], to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on [the ESCB and the ECB].’

Background to the dispute

14 As of February 2015, the Central Bank of Slovenia and the Slovenian law enforcement authorities (‘the Slovenian authorities’) had exchanges regarding an investigation carried out by the latter against certain members of staff of that central bank, including the governor at the time (‘the Governor’), on suspicion of abuse of power and of official functions in connection with the restructuring, in 2013, of a Slovenian bank. In the course of those exchanges, the Central Bank of Slovenia sent to the Slovenian authorities, at the request of the latter, certain information and certain documents which were not

linked to the performance of the tasks of the ESCB and of the Eurosystem. The Slovenian authorities however took the view that the Central Bank of Slovenia had not provided all the information and documents requested.

- 15 On 6 July 2016, on the basis of two orders of the Okrožno sodišče v Ljubljani (Ljubljana Regional Court, Slovenia) of 30 June and 6 July 2016, the Slovenian authorities, in connection with the abovementioned investigation, searched the premises of the Central Bank of Slovenia and seized documents.
- 16 Although the Central Bank of Slovenia argued that those measures concerned ‘archives of the ECB’, protected by the Protocol on privileges and immunities, to which the Slovenian authorities were not to have access without the express agreement of the ECB, those authorities continued with that search and seizure of documents without involving the ECB.
- 17 As well as documents in hard copy, the Slovenian authorities seized, inter alia, electronic documents from the IT server of the Central Bank of Slovenia and the personal computers of the suspected persons. The documents seized, which were in the Governor’s possession, included all communications sent through his email account, all 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. The Slovenian authorities also seized all electronic documents from that period stored on the IT server of the Central Bank of Slovenia and relating to the Governor.
- 18 On the same day, in a letter sent to the Slovenian authorities, the President of the ECB formally protested against the authorities’ seizure of the documents, referring to the principle of the inviolability of the ECB’s archives. In particular, he objected that those authorities had not taken any action to find a solution enabling the investigation carried out by them to be reconciled with the principle of the inviolability of the ECB’s archives.
- 19 In the exchanges that followed between the ECB and the Slovenian authorities, the latter informed the ECB on 7 July 2016 that it was only after the documents seized had been received that any objections in relation to the privileges and immunities of the ECB would be examined.
- 20 On 26 July 2016, the ECB suggested to the Slovenian authorities that they could agree on a method to identify the documents seized which were part of its archives, which would enable those documents to be excluded from an immediate assessment in the investigation and would give the ECB the opportunity to determine whether the protection of those documents should be waived.
- 21 On 27 July 2016, the Prosecutor-General in charge of the case (‘the Prosecutor-General’) informed the ECB that he regarded that proposal as interference in the ongoing investigation. He nevertheless showed that he was open to continuing to examine the concerns voiced by the ECB and stated that he was willing to meet the representatives of the latter at the end of August 2016.
- 22 On 5 August 2016, the ECB brought an action against the two orders of the Okrožno sodišče v Ljubljani (Ljubljana Regional Court) referred to in paragraph 15 above before the Upravno sodišče (Administrative Court, Slovenia), which the latter dismissed by decision of 9 August 2016. On 11 October 2016, the appeal brought by the ECB against that decision was dismissed by the Vrhovno sodišče (Supreme Court, Slovenia).
- 23 On 16 August 2016, the Prosecutor-General informed the ECB that he had decided to postpone the meeting planned with the ECB’s representatives, while stating that he had instructed the Slovenian police not to examine the documents seized until he had adopted a definitive position concerning the issue of cooperation with the ECB.

- 24 On 27 October 2016, the Prosecutor-General informed the ECB that the investigators would begin securing the electronic data seized, in accordance with the *Zakon o kazenskem postopku* (Code of Criminal Procedure), as of 17 November 2016 and that the ECB's representative was invited to participate in that procedure for securing the data, which involved creating copies of that data. On 11 November 2016 the ECB's representative accepted that invitation.
- 25 Since the procedure for securing the data was scheduled to take place between 17 November and 24 December 2016 and the meeting between the ECB and the Prosecutor-General was scheduled for 18 November 2016, on 16 November 2016 the ECB lodged an application for interim measures with the *Okrožno sodišče v Ljubljani* (Ljubljana Regional Court) seeking an order that the procedure for securing the electronic documents seized be suspended.
- 26 By order of 17 November 2016, the *Okrožno sodišče v Ljubljani* (Ljubljana Regional Court) dismissed that application. According to that court, the data and documents seized by the Slovenian authorities did not constitute 'archives of the ECB' protected under the Protocol on privileges and immunities.
- 27 The procedure for securing the electronic documents seized by the Slovenian authorities took place between 17 November and 15 December 2016. The representative of the ECB, who was present during that procedure, expressly asserted that the 'archives of the ECB' had been violated.
- 28 On 17 January 2017, the ECB brought a constitutional complaint against the order referred to in paragraph 26 above, relying on the fundamental procedural rights set out in the *Ustava Republike Slovenije* (Constitution of the Republic of Slovenia), in particular the right to be heard by a court or tribunal established in accordance with the law. In that constitutional complaint, the ECB submitted that it took the view that a request for a preliminary ruling should be referred to the Court of Justice on the interpretation of Article 2 of the Protocol on privileges and immunities. On 19 April 2018, the *Ustavno sodišče* (Constitutional Court, Slovenia) dismissed that complaint on the ground that the ECB could not claim the fundamental procedural rights upon which it was relying.
- 29 By email of 15 May 2017, the Prosecutor-General informed the ECB's representative that the Slovenian police were currently evaluating the documents seized and that he had instructed the latter to separate from the rest of the documents, first, all documents which had been formally and officially issued by the ECB and, secondly, all emails in respect of which the ECB was the sender and the Central Bank of Slovenia the recipient. The Prosecutor-General proposed that the ECB examine those documents, subject to the agreement of the Central Bank of Slovenia, so the ECB could comment on any interference with its tasks and its functions resulting from the use of those documents for the purposes of the investigations and criminal proceedings. He pointed out that, where such interference was found to exist, he would request that the case be dealt with in closed session or request an order that the examination of the substance of the case remain confidential. The Prosecutor-General concluded by declaring himself to be open to the ECB's proposals and suggestions, with the exception of any request seeking to prohibit the investigation or to obtain the return of the documents seized.
- 30 In its reply of 29 May 2017, the ECB proposed that both parties meet to discuss in more detail how they might cooperate mutually with a view to guaranteeing the inviolability of its archives.
- 31 At a meeting on 12 June 2017 with the Prosecutor-General, the ECB submitted that it considered its archives to include, first, the documents which it had drawn up itself in the performance of its tasks, secondly, the communications between it and national central banks which were necessary for the performance of the tasks of the ESCB or of the Eurosystem and, thirdly, the documents drawn up by those central banks for the performance of the tasks of the ESCB or of the Eurosystem. It also claimed that the ECB had to waive the protection enjoyed by those documents before they could be used in criminal proceedings conducted by national authorities. However, the ECB stated that it

would not refuse to waive such protection if that was in the interests of the proceedings conducted by the national authorities and was not contrary to its own interests, protected under the Protocol on privileges and immunities.

- 32 Although the Prosecutor-General and the ECB did not reach agreement on the interpretation of the concept of ‘archives of the ECB’ or on the content of the obligation of sincere cooperation, they agreed to continue the discussion on their future cooperation and that, at the next stage, the ECB would draw up a proposal containing criteria for the identification of documents which, in its view, were covered by that concept.
- 33 On 13 February 2018, the ECB sent the Prosecutor-General its proposal on the identification of the documents which were part of the ECB’s archives. In this connection it suggested that, first, the documents issued by the ECB and the documents which it had sent to the Central Bank of Slovenia or its staff should be identified followed by, next, the documents which the Central Bank of Slovenia had drawn up in connection with the performance of the tasks of the ESCB or of the Eurosystem. The ECB also proposed that the Slovenian police return to the Central Bank of Slovenia all the documents which the police did not consider relevant to the investigation.
- 34 At a meeting which took place on 13 June 2018, the Prosecutor-General informed the ECB that the Slovenian police had completed their examination of the documents seized and that he was expecting, by the autumn, a report presenting the police’s final conclusions. While confirming that there were still differences as to the interpretation of the concept of ‘archives of the ECB’, he observed that all the documents that were of no relevance for the investigation would be destroyed or returned to the person from whom they had been seized. He also declared that the ECB would have the opportunity to examine all the documents meeting the criteria which he had proposed in his email of 15 May 2017, referred to in paragraph 29 above, once the Slovenian police had established their final report. However, in order to prevent the ECB from interfering with the ongoing proceedings, the documents used for that final report would not be released to the ECB until the Slovenian police had handed them over to the Public Prosecutor’s Office.

Pre-litigation procedure and proceedings before the Court

- 35 On 9 December 2016, the Commission sent a letter to the Republic of Slovenia under the ‘EU Pilot’ procedure, informing that State of its doubts as to the correct application of Articles 2 and 22 of the Protocol on privileges and immunities in respect of the seizure of documents carried out at the premises of the Central Bank of Slovenia on 6 July 2016. The Republic of Slovenia replied to that letter by a letter of 23 January 2017.
- 36 On 28 April 2017, the Commission sent the Republic of Slovenia a letter of formal notice in which it stated that, by conducting a search and seizing documents at the premises of the Central Bank of Slovenia, the Republic of Slovenia had failed to fulfil its obligation to observe the principle of the inviolability of the archives of the ECB, in breach of Article 343 TFEU, Article 39 of the Protocol on the ESCB and the ECB and Articles 2 and 22 of the Protocol on privileges and immunities. It also informed the Republic of Slovenia that it considered the Slovenian authorities not to have engaged in constructive discussion on that issue with the ECB, contrary to the requirements of the principle of sincere cooperation laid down in Article 4(3) TEU and Article 18 of the Protocol on privileges and immunities.
- 37 The Republic of Slovenia replied to that letter of formal notice by letter of 21 June 2017 in which it stated that the documents seized could not be subsumed under the term ‘archives of the ECB’ for the purposes of the Protocol on privileges and immunities.

- 38 Taking the view that the Republic of Slovenia's response was not satisfactory, on 20 July 2018 the Commission issued a reasoned opinion in which it requested the Republic of Slovenia to take the necessary measures to comply with that opinion within two months of its receipt.
- 39 On 11 September 2018, the Republic of Slovenia, in its reply to that reasoned opinion, disputed the infringement alleged by the Commission.
- 40 In those circumstances, the Commission decided to bring the present action.
- 41 By decision of the President of the Court of 23 July 2019, the ECB was granted leave to intervene in support of the form of order sought by the Commission.

The action

The first head of claim, alleging interference with the principle of the inviolability of the archives of the ECB

Arguments of the parties

- 42 The Commission, supported by the ECB, submits that by unilaterally seizing at the premises of the Central Bank of Slovenia documents connected to the performance of the ESCB's and the Eurosystem's tasks, the Republic of Slovenia has infringed the principle of the inviolability of the archives of the ECB and, consequently, has failed to fulfil its obligations under Article 343 TFEU, Article 39 of the Protocol on the ESCB and of the ECB, Articles 2, 18 and 22 of the Protocol on privileges and immunities and Article 4(3) TEU.
- 43 In the first place it submits that the concept 'archives of the Union' in Article 2 of the Protocol on privileges and immunities, although not defined in that protocol, covers all the documents belonging to an EU institution or held by it, regardless of their medium.
- 44 In the second place, it is apparent from case-law that the privileges and immunities recognised by that protocol have a purely functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the European Union. In the light of the special institutional regime of the ESCB and of the Eurosystem, Article 2 of the Protocol on privileges and immunities should apply not only to the documents held by the ECB but also to those held by the national central banks which are part of the ESCB and the Eurosystem, such as the Central Bank of Slovenia, in so far as those documents relate to the execution of the tasks of the ESCB or of the Eurosystem, irrespective of whether they originate from the ECB or the national central banks.
- 45 First, it follows from Article 282(1) TFEU and Article 1 of the Protocol on the ESCB and the ECB that the ESCB is constituted of the ECB and the national central banks of the Member States and, furthermore, the ECB and the national central banks of the euro area constitute the Eurosystem, of which the national central banks 'are an integral part' under Article 14.3 of that protocol.
- 46 Secondly, the specific structure of the ESCB and the Eurosystem inevitably creates a close link between the ECB and the national central banks. Specifically, it is apparent from Article 282(2) TFEU and Article 8 of the Protocol on the ESCB and the ECB that the ESCB is governed by the decision-making bodies of the ECB, including the ECB's Governing Council. According to Article 283(1) TFEU and Article 10 of the Protocol on the ESCB and the ECB, the governors of the national central banks of the Member States whose currency is the euro are members of that council.

- 47 Thirdly, the TFEU confers tasks on the ECB, the ESCB and the Eurosystem. In that regard, it is apparent from Article 9.2 of the Protocol on the ESCB and the ECB that the tasks conferred on the ESCB are implemented either by the ECB itself or through the national central banks.
- 48 The national central banks and their governors participate directly in decision-taking at the ECB and in the implementation and execution of those decisions. The functioning of the system thus established requires an exchange of documents within the ESCB and the Eurosystem and between the ECB and the national central banks for the purpose of adopting the decisions necessary for the performance of the tasks of the ESCB and of the Eurosystem and for the implementation and execution of those decisions by the national central banks. To avoid any interference with the proper functioning and the independence of the ECB, and of the ESCB and the Eurosystem as a whole, there should be the same level of protection for all documents drawn up for the purposes of carrying out the tasks of the ESCB and of the Eurosystem. Consequently, all those documents should be regarded as part of the ‘archives of the Union’, even if they are held by a national central bank or located at its premises.
- 49 In the third place, it is not disputed that, during the search made on 6 July 2016 at the premises of the Central Bank of Slovenia, the Slovenian authorities seized documents which were part of the archives of the Union. Admittedly, the Commission does not have specific information on the nature of the documents which were part of the archives of the Union and seized on that date. However, the mere fact that the IT equipment of the suspected persons and the documents referred to in paragraph 17 above were seized in their entirety resulted in documents forming part of the archives of the Union undoubtedly having been seized.
- 50 In the fourth place, the principle of the inviolability of those archives means that the national authorities can have access to them only with the ECB’s prior agreement or, in the event of disagreement between the ECB and those authorities, with the authorisation of the Court of Justice. In the present case, the search and seizure of the documents concerned were carried out unilaterally.
- 51 The Republic of Slovenia contends in reply that it did not infringe the principle of the inviolability of the archives of the Union.
- 52 In the first place, the Republic of Slovenia submits that it results from both international law and the case-law of the Court of Justice, as well as from the fundamental values of the European Union such as the principles of transparency, openness and the rule of law, that the concept of ‘privileges and immunities’, must be strictly interpreted and that, far from being of an absolute nature, the exercise of those privileges and immunities is restricted in functional terms to the extent necessary to guarantee the functioning of the European Union and its institutions and to achieve their objectives.
- 53 In particular, the aim of the system of privileges and immunities in international law is to guarantee the effective functioning of international organisations, which are ‘in a position of weakness’ in relation to their founding Member States. Having regard to the evolution of EU law and the particular nature of the EU’s legal order, the EU institutions are not in such a position in relation to the Member States. Accordingly, the archives of the Union, including those of the ECB, enjoy less extensive protection than under the system of privileges and immunities in international law. That fact supports a strict interpretation of the concept of ‘privileges and immunities of the European Union’.
- 54 Furthermore, although the functional immunity of international organisations falls within the scope of a legitimate public interest, it is not absolute and should be reconciled with other public interests. In the European Union, the principle of the rule of law takes precedence over the privileges and immunities of the European Union. The investigation and the independent and impartial judgment of criminal offences, which fall within the competence of the Member States, constitute a ‘fundamental premiss of the rule of law’. Had the Slovenian authorities been required to seek the prior agreement of the ECB before undertaking the search they carried out in the present case, that independence would not have been guaranteed, since the Governor is closely linked to the ECB.

- 55 In addition, given that the privileges and immunities provided for in the Protocol on privileges and immunities are guaranteed to the European Union only in so far as is necessary in order to avoid any interference with the functioning and independence of the latter, the burden of proof of the existence of such interference is borne by the EU institution concerned. The Commission and the ECB however have not shown that the seizure of documents carried out by the Slovenian authorities, as the case may be, actually interfered in any way with the functioning of the ECB or compromised the EU's economic and monetary policy.
- 56 In the second place, the Republic of Slovenia claims that the concept of 'archives of the Union' must also be interpreted strictly and that the documents seized by the Slovenian authorities at the premises of the Central Bank of Slovenia were not part of the archives of the ECB. In this connection, first, it submits that the rules concerning the immunity of archives under international law, in particular those applicable to consular and diplomatic relations, are relevant in the present case. According to the case-law of the international and national courts, solely the documents which belong to or are held by the person benefiting from the principle of inviolability of archives may be regarded as forming part of the archives, and not those which are sent by such a person to a third party or which are held by a third party.
- 57 Secondly, the objective of the Protocol on privileges and immunities is to ensure the independence of the EU institutions. Thus, solely the ECB, as an EU institution, may enjoy the privileges and immunities provided for by that protocol, and not the ESCB and, as an integral part of the ESCB, the national central banks.
- 58 Thirdly, the interpretation of the provisions at issue defended by the Commission would mean that archives of the Union might be located on the computers of all the national staff and civil servants who are members of the EU institutions or who work under their management, including the ministers of the Member States who participate in decisions of the Council of the European Union, the heads of State or of government of the Member States who participate in decisions of the European Council and all the national staff who work in the EU committees and agencies. That would amount in practice to 'absurd situations' in which all documents in the possession of the national government and its ministers, the head of State and entire administrations of the State would be regarded as archives of the Union.
- 59 Fourthly, the interpretation of the concept of 'archives of the ECB' proposed by the Commission is impossible to implement, in both law and fact, which would prevent or significantly hinder any criminal investigation in the public sector in the Member States.
- 60 In the third place, the Republic of Slovenia further argues that, even if the documents seized by the Slovenian authorities at the premises of the Central Bank of Slovenia are part of the archives of the ECB, that fact is not a sufficient basis on which to find that it has infringed the principle of the inviolability of the archives of the Union.
- 61 First, the party relying on the inviolability of the archives bears the obligation to identify clearly and to protect them. Given that, in the present case, the ECB failed to identify its archives adequately and did not properly protect them, it is not possible to implement the concept of 'archives of the ECB' adopted by that institution, and that impossibility is in no event linked to the manner in which the criminal investigation was carried out in Slovenia. In addition, it was due to the very fact that the archives of the Union were not kept separately in physical terms or properly designated that the Slovenian authorities had no choice other than to seize all the goods and documents concerned in order to obtain the information sought.

- 62 Secondly, the objective of the investigation carried out by the Slovenian authorities was not to infringe the principle of the inviolability of the archives of the ECB, nor, a fortiori, to interfere with that institution's performance of its tasks or independence. The national investigation, which took place in accordance with national law and with national judicial decisions thus did not infringe that principle.
- 63 Thirdly, the wide definition, as adopted by the Commission and the ECB, of the concept of 'archives of the Union', would in practice mean that the criminal investigation was impossible to pursue, such as to result ultimately in the impunity of the suspected persons.
- 64 Fourthly, under Article 1 of the Protocol on privileges and immunities, the Court of Justice's authorisation is required only in the event that the national authorities wish to adopt administrative or legal measures of constraint concerning the property or assets of the Union. By contrast, neither Article 2 of that protocol nor the Court's case-law require such authorisation, inasmuch as the Slovenian authorities were not seeking to obtain documents belonging to the EU institutions or in their possession.

Findings of the Court

- 65 A preliminary point to note is that at the hearing, in response to a question put by the Court, the Commission stated that although in its action it refers both to the search and to the seizure of documents carried out by the Slovenian authorities at the premises of the Central Bank of Slovenia on 6 July 2016, in fact that action is directed solely at the seizure of the documents.
- 66 In that regard, the Commission claims that by unilaterally seizing documents at the premises of the Central Bank of Slovenia on 6 July 2016, the Slovenian authorities infringed the principle of the inviolability of the archives of the Union. It is therefore necessary to examine, in the first place, whether the documents seized by the Slovenian authorities on that occasion included documents which were part of the archives of the ECB and, if that was the case, in the second place, whether the seizure of those documents constituted an infringement of the principle of the inviolability of those archives.

– The concept of 'archives of the Union'

- 67 Pursuant to Article 2 of the Protocol on privileges and immunities, the archives of the Union are inviolable. In order to ascertain whether, as the Commission claims, the Republic of Slovenia has failed to fulfil its obligations under that article, it is first of all necessary to establish the scope of the concept of 'archives of the Union'.
- 68 First of all, in respect of the Republic of Slovenia's argument that the concept of 'archives' should be interpreted by reference to international law, it should be recalled that, by contrast with ordinary international treaties, the Treaties on the European Union have created their own legal system which, on the entry into force of those treaties, became an integral part of the legal systems of the Member States (order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315, paragraph 15). It follows that the concept of 'archives of the Union' is an autonomous concept of EU law, distinct from that which might be accepted by international organisations and courts or by the law of the Member States.
- 69 It follows from case-law that such a concept, on account of its autonomous nature, must be interpreted having regard to its terms, in the light of the context and of the objective pursued by the provision in which that concept is used (see, to that effect, judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 62).

- 70 The term ‘archives’ commonly designates a set of documents, irrespective of when they are dated, their type and their medium, held by a person in the exercise of his or her activity.
- 71 However, in EU law the term ‘archives’ has been defined in a different context to that of the Protocol on privileges and immunities, namely Article 1(2)(a) of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ 1983 L 43, p. 1), as all those documents and records of whatever type and in whatever medium which have originated in or been received by one of the institutions, bodies, offices or agencies or by one of their representatives or servants in the performance of their duties, and which relate to the activities of those Communities.
- 72 That definition of the concept of ‘archives’ is relevant for the purposes of the interpretation of Article 2 of the Protocol on privileges and immunities. Indeed, no provision of that protocol precludes that definition from being taken into account and taking it into account helps to ensure that the scope of that concept is interpreted consistently in EU law.
- 73 In respect of the objective pursued by Article 2 of the Protocol on privileges and immunities, according to case-law the privileges and immunities accorded to the European Union by the Protocol on privileges and immunities have a functional character, inasmuch as they are intended to avoid any interference with the functioning and independence of the European Union (order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315, paragraph 19; judgment of 18 June 2020, *Commission v RQ*, C-831/18 P, EU:C:2020:481, paragraph 47). The Court has held in that regard that the principle of the inviolability of archives of the Union could, inter alia, be relied upon by an EU institution in order to prevent the disclosure of information contained in the documents included in the archives of the institution concerned where such disclosure would be capable of interfering with the functioning and independence of that institution, in particular by jeopardising the performance of the tasks entrusted to it (see, to that effect, order of 6 December 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:440, paragraph 11).
- 74 That objective of protection shows that the archives of the Union referred to in Article 2 of the Protocol on privileges and immunities necessarily cover any document relating to the activities of the European Union and its institutions, bodies, offices and agencies or to the performance of the tasks of those entities.
- 75 It is apparent from the foregoing considerations that the concept of ‘archives of the Union’ within the meaning of Article 2 of the Protocol on privileges and immunities must be understood as meaning all those documents of whatever date, of whatever type and in whatever medium which have originated in or been received by the institutions, bodies, offices or agencies of the European Union or by their representatives or servants in the performance of their duties, and which relate to the activities of or the performance of the tasks of those entities.

– *The extent of the archives of the BCE*

- 76 Since the ECB is an EU institution, it is apparent from Article 2 of the Protocol on privileges and immunities, as interpreted in the preceding paragraph and read in conjunction with Article 343 TFEU, Article 39 of the Protocol on the ESCB and the ECB and Article 22 of the Protocol on privileges and immunities, that the principle of the inviolability of the archives of the Union applies to the archives of the ECB.
- 77 However, it is necessary to establish whether documents in the possession, not of the ECB, but of a national central bank may also be considered to form part of the ‘archives of the ECB’.

- 78 In the first place, in this connection, as the Advocate General observed in point 50 of her Opinion, the archives of the Union need not necessarily be kept at the premises of the institution, body, office or agency concerned, otherwise the scope of Article 2 of the Protocol on privileges and immunities would be indissociable from that of Article 1 of that protocol, which provides for the inviolability of the premises and buildings of the Union, to the point of rendering Article 2 of the Protocol redundant. It follows that Article 2 of the Protocol covers the archives of an EU institution, such as the ECB, located at premises other than those of the European Union.
- 79 In the second place, it follows from Article 282(1) TFEU and Articles 1 and 14.3 of the Protocol on the ESCB and the ECB that the ECB and the national central banks of the Member States constitute the ESCB, those national central banks being an integral part of that system. It also follows from those provisions that the ECB, together with the national central banks of the Member States whose currency is the euro (including the Central Bank of Slovenia), which constitute the Eurosystem, are to conduct the monetary policy of the Union.
- 80 Under Article 127(1) and Article 282(2) TFEU, the primary objective of the ESCB is to maintain price stability, as is recalled by Article 2 of the Protocol on the ESCB and the ECB. To that end, Article 127(2) TFEU provides that the basic tasks to be carried out through the ESCB include, inter alia, that of defining and implementing the monetary policy of the Union. Through the ESCB, such tasks are thus the responsibility not only of the ECB but also of the national central banks. Close cooperation between the ECB and the latter is therefore required.
- 81 It must also be recalled that, under Article 129(1) and Article 282(2) TFEU and Article 8 of the Protocol on the ESCB and the ECB, the ESCB is governed by the decision-making bodies of the ECB, including the Governing Council of the ECB. Article 283(1) TFEU and Article 10.1 of the Protocol on the ESCB and the ECB provide that the governors of the national central banks of the Member States whose currency is the euro are members of the Governing Council of the ECB. Those governors, including the Governor of the Central Bank of Slovenia, consequently participate in the adoption of the decisions necessary to perform the tasks of the ESCB.
- 82 In addition, under Article 9.2. of the Protocol on the ESCB and the ECB, the tasks conferred on the ESCB are to be implemented either by the ECB itself or by the national central banks.
- 83 As the Court has held, it is apparent from those provisions that the ESCB represents a novel legal construct in EU law which brings together national institutions, namely the national central banks, and an EU institution, namely the ECB, and causes them to cooperate closely with each other, and within which a different structure and a less marked distinction between the EU legal order and national legal orders prevails (judgment of 26 February 2019, *Rimšēvičs and ECB v Latvia*, C-202/18 and C-238/18, EU:C:2019:139, paragraph 69). In this highly integrated system intended by the authors of the Treaties for the purposes of the ESCB, 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, as was observed in paragraph 79 above, is constituted by those national central banks and the ECB.
- 84 As the Advocate General observed in point 54 of her Opinion, the correct functioning of the ESCB and 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.
- 85 In those circumstances, it must be held that such documents are covered by the concept of ‘archives of the ECB’ even if they are held by national central banks and not by the ECB itself. Given the functional nature which the principle of the inviolability of the archives of the Union should be acknowledged to

have, as recalled in paragraph 73 above, that principle would be rendered redundant if it did not protect the documents issued by the ECB or the national central banks and exchanged between those entities for the purposes of the performance of the tasks of the ESCB and of the Eurosystem.

86 That conclusion is not called into question by the other arguments relied upon by the Republic of Slovenia.

87 First, so far as concerns the line of argument put forward by the Republic of Slovenia that the communication of a document to a third party means, under international law, that that document can no longer be regarded as part of the archives of the State which communicated it, it must be observed that, having regard to the close cooperation and the structural links between the ECB and the national central banks in the integrated system constituted by the ESCB, the national central banks cannot, as the Advocate General observed in point 56 of her Opinion, be considered to be ‘third parties’ in relation to the ECB.

88 Secondly, so far as concerns the arguments of the Republic of Slovenia reproduced in paragraph 58 above, it is sufficient to observe that, as regards documents linked to the performance of the tasks of the ESCB and of the Eurosystem, the interpretation of the concept of ‘archives of the Union’, as accepted in paragraph 85 above, is based on the particularly close relations between the ECB and the national central banks, as described in paragraphs 83 and 84 above.

89 Thirdly, there is no basis in fact or in law for holding that such an interpretation could pose insurmountable problems for the authorities of a Member State wishing, in proceedings conducted at national level and on the basis of the law of that Member State, to seize documents at the premises of a central bank, with the result that such a seizure cannot be limited to documents not linked to the performance of the tasks of the ESCB and of the Eurosystem.

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

90 As regards the issue whether the seizure of documents by the Slovenian authorities on 6 July 2016 at the premises of the Central Bank of Slovenia constituted an infringement of the principle of inviolability of the archives of the ECB, such infringement 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 the present case in fact included documents which must be considered to form part of the archives of the ECB.

91 In the first place, as the Commission argues in its application, the concept of ‘inviolability’, within the meaning of Article 2 of the Protocol on privileges and immunities, means protection against any unilateral interference on the part of the Member States. That is confirmed, as the Advocate General observed in points 67 and 68 of her Opinion, by the fact that that concept, which also appears in Article 1 of the Protocol, is described as protection against any search, requisition, confiscation or expropriation measures.

92 Therefore, the unilateral seizure by the national authorities of documents belonging to the archives of the Union must be considered to constitute an infringement of the principle of the inviolability of those archives of the Union.

93 In the second place, according to settled case-law on the burden of proof in proceedings for failure to fulfil obligations under Article 258 TFEU, it is for the Commission to prove the existence of the alleged infringement. It must provide the Court with the information necessary for it to determine whether the infringement is made out, and the Commission may not rely on any presumption for that purpose (see,

inter alia, judgments of 27 April 2006, *Commission v Germany*, C-441/02, EU:C:2006:253, paragraph 48, and of 5 September 2019, *Commission v Italy (Bacteria Xylella fastidiosa)*, C-443/18, EU:C:2019:676, paragraph 78).

- 94 In the present case, the Commission has acknowledged that it did not have specific information as to the nature of the documents seized by the Slovenian authorities at the premises of the Central Bank of Slovenia on 6 July 2016, 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. At the hearing, the Commission explained in that connection, without its being disputed by the Republic of Slovenia, that those documents were still in the possession of the Slovenian authorities.
- 95 However, as observed in paragraph 17 above, the documents seized by the Slovenian authorities included all communications sent through the Governor's email account, all 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. The Slovenian authorities also seized all electronic documents from the period 2012 to 2014 stored on the IT server of the Central Bank of Slovenia and relating to the Governor.
- 96 Having regard, first, to the considerable number of documents seized and, secondly, to the duties that the governor of a national central bank, such as the Central Bank of Slovenia, is called upon to carry out within the framework of the Governing Council of the ECB, and therefore also in connection with the ESCB and the Eurosystem, the documents seized by the Slovenian authorities must have included documents which were part of the archives of the ECB. Furthermore, the Republic of Slovenia does not claim that the documents seized were exclusively documents which did not fall within that category of documents.
- 97 Accordingly, it may be considered as established that the material and documents seized by the Slovenian authorities at the premises of the Central Bank of Slovenia on 6 July 2016 included documents which were part of the archives of the ECB.
- 98 Since Article 2 of the Protocol on privileges and immunities expressly provides that the archives of the Union are inviolable, by seizing such documents unilaterally the Slovenian authorities infringed the principle of the inviolability of the archives of the ECB.
- 99 That conclusion is not called into question by the arguments put forward by the Republic of Slovenia.
- 100 First, although the privileges and immunities of the European Union have a functional character, as was recalled in paragraph 73 above, that does not mean that the institution concerned or, in an action for failure to fulfil obligations under Article 258 TFEU, the Commission, has to prove that the disclosure of certain documents entails interference with the functioning and independence of the European Union in order for it to be possible to consider unlawful the unilateral seizure of those documents by the authorities of a Member State. Such an interpretation would be manifestly contrary to both the wording and the objective of Article 2 of the Protocol on privileges and immunities, under which 'the archives of the Union shall be inviolable'.
- 101 Admittedly, the principle of the inviolability of the archives of the Union does not mean that the authorities of the Member States may not in any situation have access to the documents in those archives. It is apparent from the Court's case-law that, having regard to their functional character, the privileges and immunities of the Union do not allow the EU institutions to disregard the obligation of sincere cooperation with the national authorities (see, to that effect, order of 13 July 1990, *Zwartveld and Others*, C-2/88-IMM, EU:C:1990:315, paragraphs 19 and 21).

- 102 In order to have access to documents in the archives of the Union, the national authorities require the agreement of the institution concerned or, if access is refused, a decision of authorisation from the EU judiciary forcing that institution to provide access to its archives. Indeed, it would make no sense not to make access to such documents subject to the agreement of the institution concerned or to authorisation by the EU judiciary in the event that the national authorities choose to act unilaterally, since such agreement or authorisation enables the inviolability of the archives of the Union to fulfil its function, namely that of preventing unjustified interference in its functioning and independence, to be safeguarded.
- 103 Secondly, it is true that, as the Republic of Slovenia submits, although the functional immunity of international organisations constitutes a legitimate public interest, it is not absolute and must be reconciled with the other public rights and interests. These include, in particular, the principle of the rule of law and, more specifically, the need to guarantee independent and impartial investigation and judgment of criminal offences, and to avoid the impunity of persons against whom criminal investigations are conducted, in particular the governors of national central banks, who are said to be in a very advantageous position on account of the close link which they have with the ECB.
- 104 However, besides the fact that the existence of privileges and immunities for international organisations and their institutions is not in itself contrary to the principle of the rule of law, Article 2 of the Protocol on privileges and immunities precludes, in principle, the seizure of documents by the authority of a Member State where those documents are part of the archives of the Union and the institutions concerned have not agreed to such seizure.
- 105 Moreover, interpreting the EU rules concerned to the effect that the authorities of a Member State are not entitled to seize unilaterally documents belonging to the ECB archives at the premises of a national central bank neither results in allowing the persons concerned by the criminal investigation impunity nor in rendering it excessively difficult, if not impossible, to carry out criminal investigations on the territory of the Member States. Even though the unilateral seizure by the authorities of a Member State of documents included in the archives of the Union is precluded under EU law, those authorities have the option of requesting the EU institution concerned to waive, subject to conditions if necessary, the inviolability of the documents concerned.
- 106 It must also be pointed out that the protection of the archives of the Union provided for in Article 2 of the Protocol on privileges and immunities 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.
- 107 Admittedly, it cannot be entirely ruled out that the need to request the ECB to allow the authorities of a Member State access to documents belonging to its archives, but held by a national central bank, might have negative consequences for a criminal investigation carried out by the national authorities so far as concerns access by those authorities to other documents also held by that national central bank which do not belong to the ECB archives but which could be relevant for the investigation concerned. However, in the present case, as the Advocate General essentially observed in point 81 of her Opinion, it does not appear that the seizure of documents by the Slovenian authorities on 6 July 2016 required an element of surprise, given that those authorities had asked the Central Bank of Slovenia beforehand, on several occasions, for information in relation to their investigation.
- 108 Thirdly, the argument that the principle of the inviolability of the archives of the Union was not infringed because, among the documents seized, those which were part of the archives of the ECB were not relevant to the handling of the pending criminal case in Slovenia, cannot be upheld since, as is apparent from paragraph 104 above, irrespective of the objective of the seizure, the infringement of that principle must be found as soon as the substantive components of the protection covered by that principle are satisfied.

109 Fourthly, the Republic of Slovenia cannot rely on an obligation on the ECB to identify clearly its archives and to take measures to protect them in order to justify the infringement of the principle of the inviolability of the archives of the Union. The protection conferred on the archives by the Protocol on privileges and immunities is not based on the premiss that the documents belonging to those archives must be clearly identified beforehand.

110 It follows from all of the foregoing that the Commission's first head of claim must be upheld.

The second head of claim, alleging failure to comply with the obligation of sincere cooperation

Arguments of the parties

111 In its second head of claim the Commission, supported by the ECB, submits that the Republic of Slovenia has failed to fulfil its obligation of sincere cooperation under Article 18 of the Protocol on privileges and immunities and Article 4(3) TEU. In essence, the Commission alleges that the Slovenian authorities did not cooperate adequately with the ECB, be it before the search by those authorities and their seizure of documents or afterwards, for the purposes of reconciling the principle of the inviolability of the archives of the ECB with the national investigation.

112 According to the Commission, the principle of sincere cooperation required the Slovenian authorities to cooperate with the ECB in order to (i) determine which documents were protected by the Protocol on privileges and immunities and which documents were not, (ii) identify, among the documents protected, those which could be relevant for the national criminal investigation, and (iii) allow the ECB to decide, in the case of the potentially relevant documents, whether the protection should be waived or whether, on the contrary, it could not be waived for reasons relating to the functioning and independence of the ECB.

113 The Commission claims that, in respect of the period preceding the search and seizure of documents, the Slovenian authorities did not establish any dialogue with the ECB or the Central Bank of Slovenia so far as concerns the manner in which the principle of the inviolability of the archives of the Union was to be safeguarded. In respect of the period after the search and seizure of documents, the Slovenian authorities, first, continued to reject the interpretation that documents held by national central banks could constitute archives of the ECB and, secondly, refused to engage in constructive discussion for the purposes of protecting the documents seized and belonging within that category.

114 The Republic of Slovenia contends that it did not fail to fulfil its obligation of sincere cooperation.

115 First, it submits, the Slovenian authorities interfered neither with the archives of the ECB nor with the functioning and independence of the latter. In any event, Article 4(3) TEU cannot be interpreted so as to provide for an 'independent obligation' on the Member States going beyond the obligations which may be imposed on them under specific provisions of EU law such as those at issue.

116 Secondly, throughout the investigation, the Prosecutor-General requested that the documents seized be handled 'with extreme caution', in order that they be accessible to the fewest investigators possible and the risk of disclosure be reduced to the minimum. Although it was not provided for under national law, the Prosecutor-General also allowed representatives of the ECB to be present during the procedure for securing those documents. In addition, it was provided that those of the documents seized which, according to the ECB, were part of its archives, could be consulted by the latter at the end of the investigation, at the premises of the public prosecution service.

- 117 Furthermore, the ECB did not reply to the Prosecutor-General's request to submit criteria enabling the identification, among the documents seized by the Slovenian authorities, of those which according to the ECB were part of its archives until 13 February 2018, that is to say 'with considerable delay'.
- 118 Thirdly, even if the Republic of Slovenia did not engage in constructive discussion with the ECB, the Commission has not shown that that fact threatened the establishment of an economic and monetary union and the maintenance of price stability in the European Union.

Findings of the Court

- 119 According to settled case-law, it follows from the principle of sincere cooperation laid down in Article 4(3) TEU that the Member States are obliged to take all the measures necessary to guarantee the application and effectiveness of EU law (judgment of 31 October 2019, *Commission v Netherlands*, C-395/17, EU:C:2019:918, paragraph 95 and the case-law cited). Under Article 18 of the Protocol on privileges and immunities, which sets out in this connection the principle laid down in Article 4(3) TEU, the institutions of the Union and the authorities of the Member States are required to cooperate in order to avoid any conflict in the interpretation and application of the provisions of that protocol (see, to that effect, judgment of 21 October 2008, *Marra*, C-200/07 and C-201/07, EU:C:2008:579, paragraphs 41 and 42).
- 120 In respect of the period preceding the seizure of the documents by the Slovenian authorities on 6 July 2016 at the premises of the Central Bank of Slovenia, it must be noted, as it was by the Advocate General in point 94 of her Opinion, that the content of the second head of claim raised by the Commission overlaps with the first head of claim, inasmuch as it concerns the same conduct. By the first head of claim, the Commission alleges specifically that the Slovenian authorities unilaterally, and therefore without consulting the ECB beforehand, seized documents at the premises of the Central Bank of Slovenia.
- 121 It is apparent from the Court's case-law that a failure to fulfil the general obligation of sincere cooperation following from Article 4(3) TEU is distinct from a failure to fulfil the specific obligations in which that general obligation manifests itself. Therefore an infringement of that general obligation may be found only in so far as it covers conduct distinct from that which constitutes the infringement of those specific obligations (see, to that effect, judgment of 30 May 2006, *Commission v Ireland*, C-459/03, EU:C:2006:345, paragraphs 169 to 171).
- 122 Consequently, in respect of the period preceding the seizure of the documents on 6 July 2016, there is no need to find a failure to fulfil the general obligations provided for in Article 4(3) TEU and Article 18 of the Protocol on the ESCB and the ECB which is distinct from the infringement already found of the more specific obligations on the Republic of Slovenia under Article 2 of that protocol.
- 123 In respect of the period after the seizure of the documents, as follows from the preceding paragraphs of the present judgment, that seizure constitutes an infringement of EU law inasmuch as the documents seized necessarily included documents linked to the performance of the tasks of the ESCB and of the Eurosystem.
- 124 According to settled case-law of the Court, under the principle of sincere cooperation provided for in Article 4(3) TEU, the Member States are required to eliminate the unlawful consequences of a breach of EU law and such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (judgment of 27 June 2019, *Belgisch Syndicaat van Chiropraxie and Others*, C-597/17, EU:C:2019:544, paragraph 54 and the case-law cited).

- 125 Admittedly, the obligation of sincere cooperation is, by its very nature, reciprocal (judgment of 16 October 2003, *Ireland v Commission*, C-339/00, EU:C:2003:545, paragraph 72). It was consequently for the ECB to assist the Slovenian authorities so that the latter could remedy, as far as possible, the unlawful consequences of its seizure of documents at the premises of the Central Bank of Slovenia on 6 July 2016.
- 126 However, to enable the ECB to cooperate effectively with the Slovenian authorities in this respect, it was essential for the Slovenian authorities to allow the ECB to identify, among the documents seized on 6 July 2016, those connected with the performance of the tasks of the ESCB and of the Eurosystem. It is common ground that, at the end of the deadline set in the reasoned opinion, the Slovenian authorities had not allowed the ECB to carry out such identification. It is also common ground that, at that date, the Slovenian authorities had not returned those documents to the Central Bank of Slovenia although, at the hearing, the Republic of Slovenia stated that such documents were not relevant for the purposes of the pending criminal case in that Member State.
- 127 It is true that the ECB was not able to provide a convincing explanation to justify the delay with which it replied to the Prosecutor-General's request that it 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. However, 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 by the Slovenian authorities on 6 July 2016 at the premises of the Central Bank of Slovenia. It is also common ground that those authorities did not accede to the ECB's request, made in its reply of 13 February 2018 and accompanying its proposal of criteria enabling identification of the documents which were part of its archives, to return to the Central Bank of Slovenia all the documents which they considered to be of no relevance for the purposes of the investigation at issue.
- 128 In those circumstances, the fact that the Slovenian authorities took measures to ensure that the confidentiality of the documents seized on 6 July 2016 at the premises of the Central Bank of Slovenia 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. The same is true of the fact, highlighted by the Republic of Slovenia, that the investigation conducted by the Slovenian authorities was not capable of threatening the establishment of an economic and monetary union and the maintenance of price stability in the European Union, since that fact has no bearing on the duty which the Slovenian authorities were under, in accordance with what was stated in paragraph 124 above, to eliminate the unlawful consequences of the infringement of the archives of the ECB which they had committed in seizing the documents on 6 July 2016.
- 129 It follows from the foregoing that, as regards the period after the contested seizure, the Slovenian authorities failed to fulfil their obligation of sincere cooperation with the ECB and that the Commission's second head of claim must be upheld.
- 130 Having regard to all the foregoing considerations, it must be declared that, by unilaterally seizing at the premises of the Central Bank of Slovenia documents connected to the performance of the tasks of the ESCB and of the Eurosystem and, as regards the period after that seizure, by failing to cooperate sincerely with the ECB on that matter, the Republic of Slovenia has failed to fulfil its obligations under Article 343 TFEU, Article 39 of the Protocol on the ESCB and the ECB, Articles 2, 18 and 22 of the Protocol on privileges and immunities and Article 4(3) TEU.

Costs

- 131 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

- ¹³² Since the Commission has applied for costs and the Republic of Slovenia has been unsuccessful, the latter must be ordered to pay the costs.
- ¹³³ Under Article 140(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs. Consequently, the ECB is to bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Declares that, by unilaterally seizing at the premises of the Banka Slovenije (Central Bank of Slovenia) documents connected to the performance of the tasks of the European System of Central Banks and of the Eurosystem and, as regards the period after that seizure, by failing to cooperate sincerely with the European Central Bank on that matter, the Republic of Slovenia has failed to fulfil its obligations under 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, Articles 2, 18 and 22 of Protocol (No 7) on the privileges and immunities of the European Union and Article 4(3) TEU;**
- 2. Orders the Republic of Slovenia, in addition to bearing its own costs, to pay those of the European Commission;**
- 3. Declares that the European Central Bank is to bear its own costs.**

[Signatures]