

Bail-in: How far does it have to go?

***The case of the expropriation of
share- and bondholders in Slovenia***

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Managing Director – Better Finance

Bail-in: the principles

- general principle: prior to any state aid to a bank in the EU, its creditors must participate in »burden sharing« through either a conversion into equity or a write-down of their claim's principal
- **consultation: 30 March 2012:** EC distributes to a selected group of financial institutions a discussion paper posing a series of questions regarding their views on possible bail-in principles and practices
- **guidelines: 1 August 2013:** EC Banking Communication, *Official Journal of the EU C216*:1-15, 30 July 2013
- **directive: 15 May 2014:** EU Bank Recovery and Resolution Directive (BRRD / Directive 2014/59/EU), *Official Journal of the EU L173*:190-348, 12 June 2014
- BRRD entry into force: **1 January 2016**
- *Official Journal of the EU:*
 - series L:** EU legislation
 - series C:** documents of the EU institutions, bodies and agencies

Bail-in: the very diverse practices

bank	country	state aid granted	shares	subordinated bonds
SNS Reaal	Netherlands	Feb. 2013	wiped out	wiped out, but Jul. 2013 retail investors repaid 100%
Bank of Cyprus	Cyprus	Mar. 2013	diluted > 90%	converted into shares
Bankia	Spain	Mar. 2013	diluted > 90%	repaid 64% (hybrid bonds) / 87% (bonds w. maturity)
Banco Gallego	Spain	Mar. 2013	diluted > 90%	repaid 61% (hybrid bonds) / 89% (bonds w. maturity)
Catalunya Banc	Spain	Mar. 2013	diluted > 90%	repaid 60% (hybrid bonds) / 85% (bonds w. maturity)
NCG Banco	Spain	Mar. 2013	diluted > 90%	repaid 60% (hybrid bonds) / 87% (bonds w. maturity)
Aug. 2013: EC Banking Communication published				
Hypo Alpe Adria Grp	Austria	Sep. 2013	nationalized 2009	left intact
Monte Paschi Siena	Italy	Nov. 2013	diluted > 90%	left intact
NLB	Slovenia	Dec. 2013	wiped out	wiped out
NKBM	Slovenia	Dec. 2013	wiped out	wiped out
Abanka	Slovenia	Dec. 2013	wiped out	wiped out
Probanka	Slovenia	Dec. 2013	wiped out	wiped out
Factor banka	Slovenia	Dec. 2013	wiped out	wiped out
Jun. 2014: EU Banking Recovery and Resolution Directive enacted				
Banca Tercas	Italy	Jun. 2014	wiped out	left intact
Parex / Reverta	Latvia	Jul. 2014	nationalized 2008	left intact, but to be repaid upon state aid repayment
Hypo Alpe Adria Grp	Austria	Aug. 2014	nationalized 2009	wiped out, but Sep 2016 offered 45% repayment
Banco Espírito Santo	Portugal	Aug. 2014	became shares and bonds of the bad part of the bank	
Banka Celje	Slovenia	Dec. 2014	wiped out	wiped out
Permanent TSB	Ireland	Apr. 2015	diluted > 90%	left intact
Banca Romagna Coop	Italy	Jul. 2015	wiped out	repaid 100% by the coop-interbank fund (FGD)
Banca Etruria	Italy	Nov. 2015	wiped out	wiped out, but April 2016 offered 80% repayment
Banca Marche	Italy	Nov. 2015	wiped out	(expropriated holders with annual income <35000 € or
CaRiChieti	Italy	Nov. 2015	wiped out	movable property <100000 €) or arbitration with up to
CaRiFerrara	Italy	Nov. 2015	wiped out	100% repayment (all expropriated holders)
Nat'l Bank of Greece	Greece	Dec. 2015	diluted > 90%	partial write-down (70% hybrid bonds, 22% bonds w.
Piraeus Bank	Greece	Dec. 2015	diluted > 90%	maturity), then conversion into shares at recap rate

Slovenian bail-in: the harshest treatment to date

- **Slovenia – December 2013 (NLB, NKBM, Abanka, Probanka, Factor banka) and December 2014 (Banka Celje):**
 - all shareholders are wiped out without compensation
 - all subordinated bondholders are wiped out without compensation
- NLB, NKBM, and Abanka were, and still are, the **systemic banks in Slovenia**
- **The state was the majority shareholder** in NLB and NKBM, and indirectly in Abanka, and held a controlling stake in them throughout their existence, i.e. ever since Slovenia's independence in 1991; furthermore, the state and state-owned NLB together held a controlling stake in Banka Celje

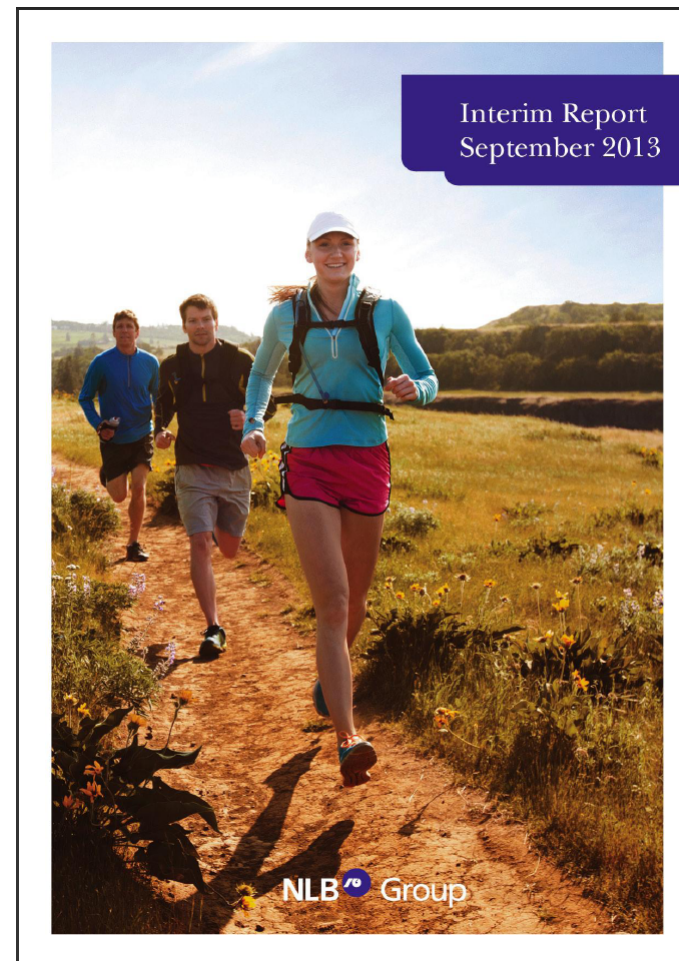
Slovenian bail-in: the harshest treatment so far

- **The state also had a deposit** in the systemic banks (1356 mn € in NLB, 822 mn € in Abanka, 361 mn € in NKBM), and the national Companies Act dictates in its Art. 498 that "*in bankruptcy procedure or compulsory settlement, a loan made by the majority owner **shall be considered to form assets of the company***"
- The national Banking Law did not override this article, and further stated in its Art. 318 that "**a bank cannot be subject to compulsory settlement**", meaning that compulsory write-down of its creditors claims was explicitly forbidden
- The prospectus of all these banks' subordinated bonds with maturity stated that "**risk of loss can only materialize in the case of the bank's bankruptcy**"

Slovenian bail-in: how did we get there?

- 15 November 2013:**
 NLB publishes its 3rd quarter 2013 financial report, with equity per **30 September 2013 of +835 mn €**

	30.9.2012	30.9.2013
Key indicators		
Return on equity after tax (ROE a.t.)	4.4%	-30.2%
Return on assets after tax (ROA a.t.)	0.4%	-2.7%
Cost/income ratio (CIR)	34.8%	75.5%
Capital adequacy ratio (CAR)	10.1%	10.2%
Tier 1 ratio	10.1%	8.6%
Loan/deposit ratio (LTD)	119.2%	103.7%
Market share in terms of total assets	25.4%	24.4%
Profit and loss account indicators (in million EUR)		
Net interest income	192.9	125.1
Net non-interest income	292.0	81.1
Costs	167.6	155.6
Impairments and provisions	240.4	265.8
Result before tax	76.9	-215.2
Result after tax	36.0	-224.1
Financial position statement indicators (in million EUR)		
Total assets	11,963	10,870
Loans to non-banking sector	7,975	7,324
Deposits from non-bankig sector	6,690	7,060
Equity	1,395	835



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- **11 December 2013:** Deloitte Consulting LLC submits its valuations of NLB's equity to Bank of Slovenia for AQR requested by the ECB it estimated equity per **30 September 2013 of -318 mn €**

Banka Slovenije na podlagi ocene izkaza finančnega položaja banke po stanju na dan 30. 9. 2013, ki jo je na zahtevo Banke Slovenije pripravil neodvisni cenilec ob predpostavki delujočega podjetja in ki vključuje dodatno potrebne oslabitve, ugotovljene v neodvisnem pregledu kvalitete kreditnega portfelja, ugotavlja, da bi banka na ta dan izkazovala **negativni kapital v višini - 317.975 tisoč EUR**. Iz tega izhaja, da premoženje banke ne zadošča za poplačilo vseh terjatev upnikov banke, in sicer ob izkazanem primanjkljaju kapitala premoženje banke ne zadošča niti za poplačilo vseh navadnih terjatev upnikov (deponentov). Banka Slovenije na tej podlagi ugotavlja, da so s tem v banki podani pogoji iz 1. točke prvega odstavka 320. člena ZBan-1 za začetek stečajnega postopka.

BANKA SLOVENIJE		STROGO ZAVPNO
EVROSISTEM		
		Oznaka: 24.20-021/13-010 Datum: 17. 12. 2013
<i>Ime organa, ki odločbo izdaja:</i>	Banka Slovenije, Svet Banke Slovenije in sestavi: dr. Božijan Jazbec, mag. Janez Fabjani, Darko Bohnc, mag. Stanislava Zadravec Capriolo, dr. Mojra Festić	
<i>Predpis o pristojnosti:</i>	Prvi odstavek 31. člena in prvi odstavek 43. člena Zakona o Banki Slovenije (Uradni list RS, št. 72/06 - uradno prečiščeno besedilo in 59/11) ter prvi odstavek 217. člena v povezavi s prvim odstavkom 253. člena Zakona o bančništvu (Uradni list RS, št. 99/10 - uradno prečiščeno besedilo (52/11 - popravek), 9/11 - ZPlaSS-B, 35/11, 59/11, 85/11, 48/12, 105/12, 56/13, 63/13-ZS-K in 96/2013; v nadaljevanju ZBan-1)	
<i>Način uveljavitve postopka:</i>	Po uradni dolžnosti	
<i>Naziv stranke:</i>	Nova Ljubljanska banka d. d., Ljubljana, Trg republike 2, 1520 Ljubljana	
<i>Zakontni zastopniki:</i>	Janez Medja, predsednik uprave Blaž Brodnjak, član uprave, Andreas Burkhardt, član uprave, Archibald Krenner, član uprave, Nima Motazed, član uprave	
<i>Zadeva, za katero gre v postopku:</i>	Opravljanje nadzora	
<i>Dan seje, na kateri je bilo o zadevi odločeno:</i>	17. 12. 2013	
ODLOČBA		
O IZREDNIH UKREPIH		
<p>1. V Novi Ljubljanski banki d. d., Ljubljana, Trg republike 2, 1520 Ljubljana (v nadaljevanju banka ali NLB) so podani pogoji iz prvega odstavka 253a. člena ZBan-1, saj</p> <p>1.1. na podlagi ocene izkaza finančnega položaja banke na dan 30. 9. 2013, pripravljene ob predpostavki delujočega podjetja, ki vključuje dodatno potrebne oslabitve, ugotovljene v neodvisnem pregledu kvalitete kreditnega portfelja, banka ne zagotavlja minimalnega kapitala v skladu s 136. člena ZBan-1, glede na tveganja, ki jim je izpostavljena Skupina NLB, ter posledično Skupina NLB ne razpolaga z zahtevanim minimalnim kapitalom glede na obseg in vrste storitev, ki jih opravlja ter tveganja, ki jim je izpostavljena pri opravljanju teh storitev, s čimer je v banki podano povečano tveganje (1. točka prvega odstavka v povezavi z drugim odstavkom 253a. člena ZBan-1);</p>		

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- Deloitte's documents remain classified and both NLB and Bank of Slovenia refuse to reveal them, despite a legally binding order by the Slovenian Information Commissioner to do so ...

Slovenian bail-in: how did we get there?

- ... but the equity estimates per 30 September 2013 on which Bank of Slovenia based its wipe out in all five banks have leaked, and they are in every of the five banks equity just negative enough that even a wipe-out of all subordinated debt would not turn it positive

	BANKE	SVETOVALNE DRUŽBE
NLB	835	-318
NKBM	246	-67
ABANKA	131	-265
PROBANKA	12	-214
FACTOR BANKA	77	-283
BANKA CELJE	42	-51

KAPITAL BANK PRED IZBRISOM (v MIL. €)

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Slovenian bail-in: the more recent developments

- **19 February 2015:** the National Bureau of Investigation announces that it *"is starting an official investigation of irregularities committed by Bank of Slovenia and NLB in the course of NLB's 2013 restructuring"*.

Kriminalisti preiskujejo Banko Slovenije, NLB in Banko Celje

K preiskavi sumov storitve kaznivih dejanj pri sanaciji bank so policijo pozvali mali delničarji.

Ni. Č., Delo.si, STA
čet, 19.02.2015, 20:08

Ključne besede: [banke](#), [Banka Slovenija](#), [NLB](#), [Banka Celje](#), [preiskave](#), [NPU](#), [mali delničarji](#)



Fotografija je simbolična. Foto: Aleš Černivec /Delo

Ljubljana - Kriminalisti Nacionalnega preiskovalnega urada (NPU) so zaradi sumov nepravilnosti pri izvedbi ukrepov za krepitev stabilnosti bank pod drobnogled vzeli Banko Slovenije, NLB in Banko Celje, je danes za POP TV povedal direktor NPU **Darko Majhenič**.

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Slovenian bail-in: the more recent developments

- **19 February 2015:** the National Bureau of Investigation announces that it *"is starting an official investigation of irregularities committed by Bank of Slovenia and NLB in the course of NLB's 2013 restructuring"*.
- **5 March 2015:** EC Vice-President Valdis Dombrovskis addresses a letter to Slovenia's prime minister, calling upon him to *"help safeguard the independence of the Bank of Slovenia and its Governor"*, and adding that *"the Commission will continue to monitor this matter"*

VALDIS DOMBROVSKIS
Vice-President of the European Commission

5. 03. 2015
Brussels,
Cab 07/JC/an (2015) sv 1073216

Central Bank independence / recent discussion on Asset Quality Review and Stress tests of Slovenian banks

Dear Prime Minister,

I am writing with respect to certain public discussions and allegations concerning the Bank of Slovenia and the members of its decision-making bodies. Some public statements have in particular referred to the Asset Quality Review and Stress tests of Slovenian banks carried out in 2013 and the subsequent recapitalisation and bail-in of subordinated bonds.

As you know, the exercise and the measures taken by the Bank of Slovenia in the process, in particular regarding the bail-in of subordinated bonds, were necessary to ensure compliance with EU legislation and state aid rules.

Full independence is a prerequisite for a national central bank to effectively perform its tasks entrusted by the Treaty for monetary policy and by secondary EU legislation for bank supervision.

The Commission is reassured by recent statements of the Government and leaders of the coalition parties reaffirming their commitment to safeguarding the credibility and the independence of the Bank of Slovenia and its Governor.

Slovenian bail-in: the more recent developments

Looking forward, to help safeguard the independence of the Bank of Slovenia and its Governor as enshrined in the Treaty, it would be useful to reiterate the importance of this central element of the European economic policy framework in the upcoming special parliamentary session, scheduled to our knowledge for 13 March, on the 2013 Asset Quality Review and Stress tests and the subsequent bank recapitalisation.

More generally, it would be important to promote a domestic political dialogue that is conducive to safeguarding central bank independence.

The Commission finally trusts that any concern the ECB raised in its legal opinion on the amendment to the Law on the Bank of Slovenia proposed by individual MPs will be fully addressed before this legislative initiative is further considered by the Parliament.

The Commission will continue to monitor this matter and is of course at the disposal of the authorities of Slovenia for any further exchange on this important issue.

Yours sincerely,



Valdis DOMBROVSKIS

Slovenian bail-in: the more recent developments

- 6 July 2016:** the National Bureau of Investigation performs a search on the premises of Bank of Slovenia (BoS), stating that the evidence provides substantiation of BoS's wrongdoing, and that BoS refused to submit the key documents voluntarily.

News in English

Slovenian police raid central bank over 2013 bank overhaul

Overall rating: ★★★★★
Rating 0.0 with 0 votes

Your rating: ★★★★★
Rate this news article!

6. July 2016 ob 14:06
Ljubljana - MMC RTV SLO

Slovenian police said on Wednesday they were conducting an investigation of business premises in four locations in Ljubljana over possible irregularities during Slovenia's bank overhaul in 2013.

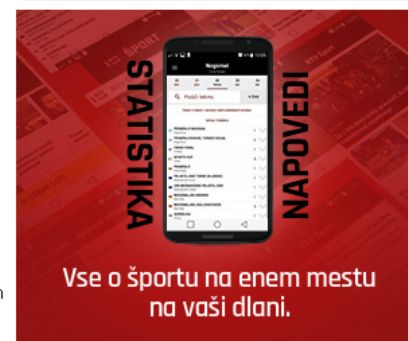
The central bank, the Bank of Slovenia, confirmed that "some of its employees" were being investigated, but declined to comment on local media reports that the bank's governor, **Bostjan Jazbec**, was among them.

Jazbec sits on the European Central Bank governing council.

The police said the issue was about an assessment of one of the banks rescued by the state in 2013 which meant the bank could scrap its obligations towards holders of subordinated bonds and subordinated debt in the value of 257 million euros.

In 2013 the previous government had to pour more than 3 billion euros into local banks to prevent them from collapsing under a large amount of bad loans. In that way the country also narrowly avoided an international bailout.

As part of the bank overhaul about 600 million euros of subordinated bonds were scrapped in five banks.



Vse o športu na enem mestu na vaši dlani.

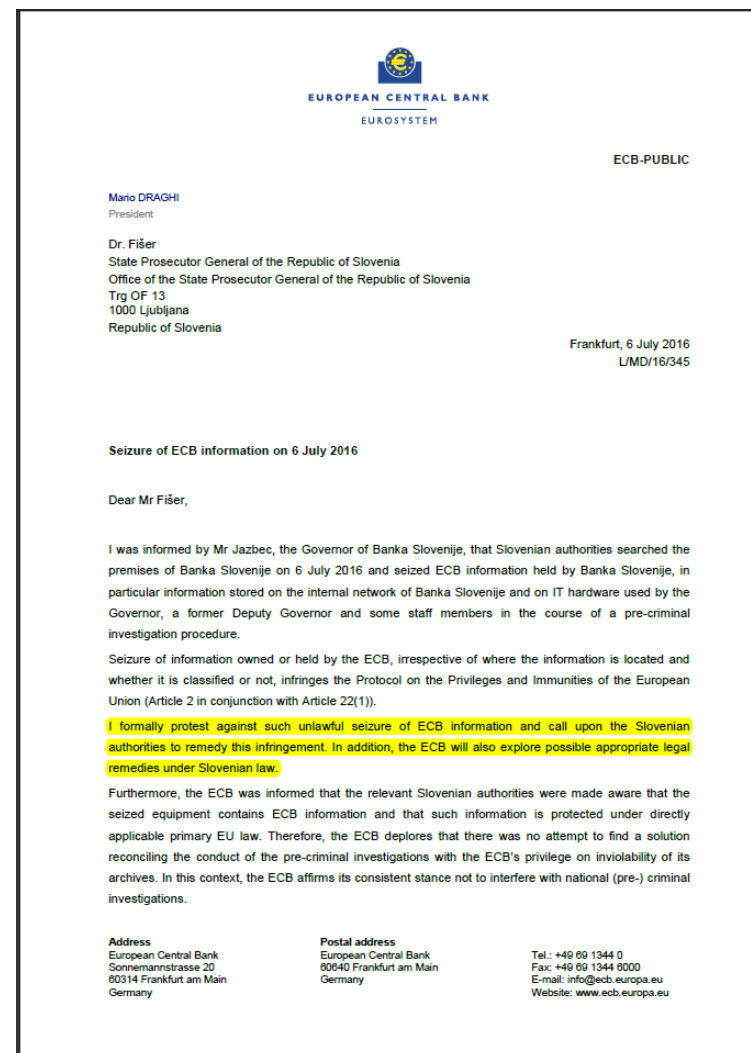


The central bank, the Bank of Slovenia, confirmed that "some of its employees" were being investigated, but declined to comment on local media reports that the bank's governor, Bostjan Jazbec, was among them. Foto: BoBo

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- **6 July 2016:** ECB President Mario Draghi addresses a letter to Slovenian State Prosecutor General, writing *"I formally protest against unlawful seizure of ECB information and call upon Slovenian authorities to remedy this infringement"*

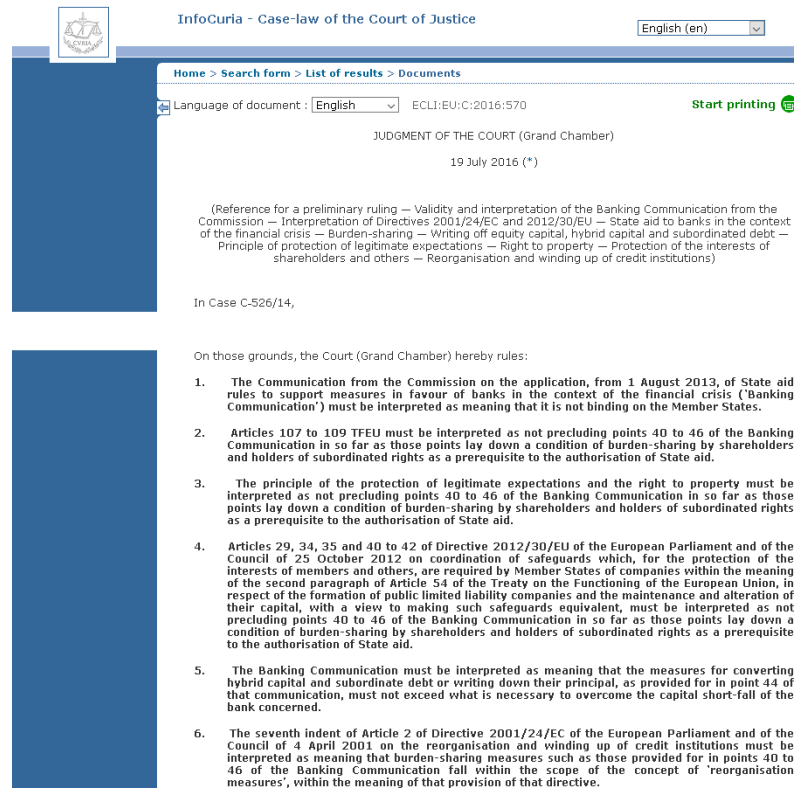


Slovenian bail-in: the more recent developments

- **19 July 2016:** the European Court of Justice rules that "*The EC Banking Communication from 1 August 2013 is not binding on the member states*"

...

- ... but adds that applying the bail-in rules as outlined in this communication does not violate the principle of protection of legitimate expectations, provided that the measures "*do not exceed what is necessary to overcome the capital short-fall of the bank concerned*"



InfoCuria - Case-law of the Court of Justice English (en)

Home > Search form > List of results > Documents

Language of document : English ECLI:EU:C:2016:570 Start printing

JUDGMENT OF THE COURT (Grand Chamber)
19 July 2016 (*)

(Reference for a preliminary ruling — Validity and interpretation of the Banking Communication from the Commission — Interpretation of Directives 2001/24/EC and 2012/30/EU — State aid to banks in the context of the financial crisis — Burden-sharing — Writing off equity capital, hybrid capital and subordinated debt — Principle of protection of legitimate expectations — Right to property — Protection of the interests of shareholders and others — Reorganisation and winding up of credit institutions)

In Case C-526/14,

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

1. The Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis ('Banking Communication') must be interpreted as meaning that it is not binding on the Member States.
2. Articles 107 to 109 TFEU must be interpreted as not precluding points 40 to 46 of the Banking Communication in so far as those points lay down a condition of burden-sharing by shareholders and holders of subordinated rights as a prerequisite to the authorisation of State aid.
3. The principle of the protection of legitimate expectations and the right to property must be interpreted as not precluding points 40 to 46 of the Banking Communication in so far as those points lay down a condition of burden-sharing by shareholders and holders of subordinated rights as a prerequisite to the authorisation of State aid.
4. Articles 29, 34, 35 and 40 to 42 of Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, must be interpreted as not precluding points 40 to 46 of the Banking Communication in so far as those points lay down a condition of burden-sharing by shareholders and holders of subordinated rights as a prerequisite to the authorisation of State aid.
5. The Banking Communication must be interpreted as meaning that the measures for converting hybrid capital and subordinate debt or writing down their principal, as provided for in point 44 of that communication, must not exceed what is necessary to overcome the capital short-fall of the bank concerned.
6. The seventh indent of Article 2 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions must be interpreted as meaning that burden-sharing measures such as those provided for in points 40 to 46 of the Banking Communication fall within the scope of the concept of 'reorganisation measures', within the meaning of that provision of that directive.

Slovenian bail-in: the more recent developments

- **27 October 2016:** The Slovenian Constitutional Court issues the final ruling on the Slovenian Banking Law as amended in November 2013 to allow for bail-in, whereby:
 - the court declares this law violated the expropriated investors' right to effective judicial protection, laying entirely on them the burden of proving the damage, despite their significantly inferior access to information with respect to the central bank;
 - the court orders the National Assembly to remedy the established unconstitutionality by adopting new legislation ensuring efficient judicial protection to expropriated investors, including improved access to information;
 - the court declares, following the ECJ ruling, that the wipe-out does not violate the constitution, provided it "*does not exceed what is necessary to overcome the capital short-fall of the bank concerned*";
 - the court stresses that whether this condition was actually met will have to be determined for each individual bank by ordinary courts, where the expropriated holders should file actions for damages.

Slovenian bail-in: the more recent developments

- **10 November 2016:** The Slovenian Court of Audit issues the final report on the re-valuations of NLB's assets as performed in December 2013, finding that:
 - the criteria for selection of non-performing loans and their re-valuation used for the transfer to the Bank Asset Management Company in December 2013 were "***neither clearly determined nor consistently followed***";
 - the bank "***failed to establish an appropriate auditing trace that would ensure the transparency of the transfer process***";
 - the bank's available documentation "***fails to reveal who was responsible for the decision-making in the re-valuations***".