BETTER FINANCE
The European Federation of Investors and Financial Services Users
Fédération Européenne des Épargnants et Usagers des Services Financiers

PRESS RELEASE

ARE ALL BANK INVESTORS TREATED EQUALLY BY EU MEMBER STATES?

21 April 2016 - The first bail-in under new European rules has taken place. A little more than a week ago Heta Asset Resolution's bondholders had no choice but to take their losses, as the Austrian regulator ordered for 54% of its debts – 100% in the case of junior (subordinated) bonds - to be written off. Bondholders will also no longer receive interests from the bank.

The 'bad' bank was formed following the nationalisation of Hypo Alpe-Adria-Bank International and given its status because the bank's portfolio was chiefly made up of risky loans from Eastern European countries. Bondholders who lent money to the bank knew that it was a risky bet.

Because of an increasing number of defaults on these loans Heta Asset Resolution no longer held sufficient collateral and when a gap of € 8.5 billion was uncovered, the regulator decided to apply the new European bail-in rules, leaving it up to the creditors to pay for the restructuring of the bank. Most of the affected creditors, such as a few German banks, insurers, hedge funds and mutual funds, were prepared for the bail-in and had already taken their loss.

But one of the creditors has taken issue with the proceedings. The World Bank holds junior Heta bonds with a face value of 150 million euros which under the new rules would be entirely wiped out. However, World Bank members, such as Austria, sign an article of agreement preventing World Bank assets from being seized by executive or legislative action.

This has complicated proceedings since the Austrian regulator has a duty to treat creditors equally, raising the possibility of compensating the World Bank differently by increasing its contribution to the international institution. In fact, according to Austrian media, a deal may already have been reached, with Austria earmarking € 159 million in its 2016-2020 budget as a "donation" to the World Bank's development agency.

This is in stark contrast with developments in Slovenia where subordinated bondholders in six Slovenian banks were expropriated as a result of a bail-in that consisted of a complete wipe-out of all subordinated bonds, including those sold over the counter to retail investors.

Despite overwhelming evidence testifying to the fact that the bonds in question were actively recommended by the banks to their retail clients, the expropriated bondholders received no compensation whatsoever and have no legal means to challenge the bail-in decisions, since the Slovenian Banking Law limits the right to legally challenge bail-in decisions to banks only.

Adding insult to injury, the prospectuses accompanying the sale of these bonds - approved by the Slovenian Securities Market Agency - contained the explicit specification that risk of loss could only materialise upon a bank's hypothetical bankruptcy.

Clearly the duty to treat creditors equally does not apply to all EU Member States, nor do retail investors get treated equally in all Member States as clearly demonstrated by the lack of information or misinformation provided to Slovenian investors regarding the risks involved in the purchase of subordinated bonds. The fact that the Slovenian authorities subjected retail investors to ex post facto bail-in legislation is entirely unacceptable.

Better Finance therefore reiterates its request for the European Commission and the Government of the Republic of Slovenia to assess the different possibilities for a fair solution to this unsustainable situation. The bail-in of Austria's bad bank, as well as other bank bail-ins that have taken place in the EU in the meantime and that have involved a settlement with investors, testify to the possibility of approaching the bail-in of retail investors differently and more justly.

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