Reports of Cases

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 11 February 2020[1]

Case C-686/18

OC and Others,
Adusbef,
Federconsumatori,
PB and Others,
QA and Others
v
Banca d'Italia,
Presidenza del Consiglio dei Ministri,
Ministero dell'Economia e delle Finanze,
joined parties:
Banca Popolare di Sondrio ScpA,
Veneto Banca ScpA,
Banco Popolare — Società Cooperativa,
Banco BPM SpA,
Ubi Banca SpA,
Banca Popolare di Vicenza ScpA,
Banca Popolare dell'Etruria e del Lazio SC,
Unione di Banche Italiane SpA,
Banca Popolare di Milano,
Unione di Banche Italiane — Ubi Banca ScpA,
Amber Capital Italia SGR SpA,
Amber Capital UK LLP,
Coordinamento delle associazioni per la tutela dell'ambiente e dei diritti degli utenti e consumatori (Codacons),
RZ and Others

(Request for a preliminary ruling from the Consiglio di Stato (Italy))

(Reference for a preliminary ruling — Regulation (EU) No 575/2013 — Article 29 — Delegated Regulation (EU) No 241/2014 — Article 10 — Regulation (EU) No 1024/2013 — Article 6(4) — Articles 16, 17 and 52 of the Charter of Fundamental Rights of the European Union — Company law — Articles 49 and 63 TFEU — Asset threshold of EUR 8 billion above which a people's bank must be converted into a company limited by shares — Right of company to defer or limit, including for an indefinite period, redemption of the shares held by the withdrawing shareholder)

1 Original language: English.

I. Introduction

1. Cooperative banking has a long tradition in many European states. It started in the mid-19th century with the establishment of the Volksbanken in Germany and building societies in the United Kingdom. These cooperative or mutual credit institutions generally followed the principle of one person per vote. These banks were originally established as an alternative to the profit-based traditional commercial banks. Cooperative banks sought to promote thrift, provide access to capital for small to medium enterprises and generally to promote a sense of fiscal responsibility on the part of their members.

2. Much has changed in the intervening 150 years. The advent of integrated and globalised payments systems, plus — as the last decade has all too painfully shown — the increased need for banking supervision and regulation, have combined to raise questions as to the future sustainability of this traditional banking model. This is perhaps especially the case where such banks enjoy a significant asset base, such that the failure of any such bank might pose a systemic threat to the local banking system and, for that matter, as again the events from 2008 illustrated, the wider European banking system.

3. All of this has prompted legislative reform in a number of Member States, spurred on perhaps by the experience of large scale banking collapses (or even threatened collapses) in several Member States from the period from 2008 onwards. Specifically, the principle of mutuality is thought by some to render such institutions unresponsive to investor sentiment. There is also the belief that the corporate governance of such institutions and general access to capital markets would be improved if these institutions were to change their status from that of mutuality to that of the conventional public company trading on public stock markets.

4. This all forms the general background to this case. In essence, therefore, the claimants in the present proceedings seek to question the compatibility of national Italian legislation recently enacted in 2015 with the requirements of EU law in circumstances I will presently describe. The key feature of this legislation is that it sets a maximum level of capital assets of EUR 8 billion, which a cooperative bank may hold.

5. Specifically, this request for a preliminary ruling concerns the interpretation of Articles 3, 63 and 107 et seq. of the FEU Treaty; Articles 16, 17 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter'); Article 29 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;[2] Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions;[3] and Article 10 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions.[4]

6. The reference, which was lodged by the Consiglio di Stato (Council of State, Italy) at the Registry of the Court on 5 November 2018, has been made in proceedings between OC and Others, Adusbef, Federconsumatori, PB and Others and QA and Others, on the one hand, and the Banca d'Italia, Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers), Ministero dell'Economia e delle Finanze (Ministry of Economy and Finance), on the other hand. I would pause here to observe that OC, PB and QA are anonymised names given to separate groups of mutual shareholders in a variety of different Italian cooperative banks ('banche popolari' or 'people's banks').

2 *OJ 2013 L 176, p. 1.*

3 *OJ 2013 L 287, p. 63.*

4 *OJ 2014 L 74, p. 8.*

7. The proceedings before the Consiglio di Stato (Council of State) concern the legality of certain acts adopted by the Italian legislature and the Banca d'Italia which, in essence, first, set an asset or capital threshold of EUR 8 billion in relation to people's banks and, second, permit such a bank, once converted into a company limited by shares, to defer redemption of shares held by a withdrawing shareholder for an unlimited period and to limit the associated amount in full or in part.

8. In accordance with the national provisions in question, when the EUR 8 billion threshold is exceeded, a people's bank has three choices: it may (i) reduce its assets or capital below that threshold, (ii) convert the bank in question into a company limited by shares or (iii) liquidate the bank. Failure to comply with one of those options may result, inter alia, in the Banca d'Italia imposing a ban on new operations or proposing that the European Central Bank ('ECB') revoke the authorisation to undertake banking activities and that the Minister for the Economy and Finance initiate compulsory administrative liquidation.

9. The Consiglio di Stato (Council of State) indicated in its request for a preliminary ruling that the national provisions in question seek, on the one hand, to establish a proper balance between the legal form and dimensions of a people's bank and, on the other hand, to comply with EU prudential rules. These provisions are thus aimed at making the regulation of national people's banks more consistent with the specific dynamics of the reference European market, guaranteeing greater competitiveness for those bodies and promoting greater transparency in their organisation, operation and functions.

10. The Consiglio di Stato (Council of State) also pointed out that all but two people's banks have complied with the legislative reforms which have been introduced. Before considering these questions it is, however, first necessary to examine the relevant legislative provisions.

II. Legal Context

A. European Union Law

1. Regulation No 575/2013

11. The first paragraph of Article 1 of Regulation No 575/2013 provides that that regulation 'lays down uniform rules concerning general prudential requirements that institutions supervised under Directive 2013/36/EU [of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC] shall comply with'.

12. According to Article 26(1)(a) of Regulation No 575/2013, capital instruments are included in Common Equity Tier 1 items, provided the conditions laid down in Article 28 or, where applicable, Article 29 are met.

13. Article 28(1) of that regulation states:

'1. Capital instruments shall qualify as Common Equity Tier 1 instruments only if all the following conditions are met:

…

(e) the instruments are perpetual;

(f) the principal amount of the instruments may not be reduced or repaid, except in either of the following cases:

(i) the liquidation of the institution;

(ii) discretionary repurchases of the instruments or other discretionary means of reducing capital, where the institution has received the prior permission of the competent authority in accordance with Article 77;

(g) the provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution, and the institution does not otherwise provide such an indication prior to or at issuance of the instruments, except in the case of instruments referred to in Article 27 where the refusal by the institution to redeem such instruments is prohibited under applicable national law;

…'

14. Article 29 of that regulation provides:

'1. Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions shall qualify as Common Equity Tier 1 instruments only if the conditions laid down in Article 28 with modifications resulting from the application of this Article are met.

2. The following conditions shall be met as regards redemption of the capital instruments:

(a) except where prohibited under applicable national law, the institution shall be able to refuse the redemption of the instruments;

(b) where the refusal by the institution of the redemption of instruments is prohibited under applicable national law, the provisions governing the instruments shall give the institution the ability to limit their redemption;

(c) refusal to redeem the instruments, or the limitation of the redemption of the instruments where applicable, may not constitute an event of default of the institution.

…

6. [The European Banking Authority (EBA)] shall develop draft regulatory technical standards to specify the nature of the limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law.

EBA shall submit those draft regulatory technical standards to the Commission by 1 February 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010 [of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12)].'

15. Article 30 of Regulation No 575/2013, entitled 'Consequences of the conditions for Common Equity Tier 1 instruments ceasing to be met', provides:

'The following shall apply where, in the case of a Common Equity Tier 1 instrument, the conditions laid down in Article 28 or, where applicable, Article 29 cease to be met:

(a) that instrument shall immediately cease to qualify as a Common Equity Tier 1 instrument;

(b) the share premium accounts that relate to that instrument shall immediately cease to qualify as Common Equity Tier 1 items.

2. Delegated Regulation No 241/2014[5]

16. Recital 10 of Delegated Regulation No 241/2014 states:

'In order to apply own funds rules to mutuals, cooperative societies, savings institutions and similar institutions, the specificities of such institutions have to be taken into account in an appropriate manner. Rules should be put in place to ensure, among others, that such institutions are able to limit the redemption of their capital instruments, where appropriate. Therefore, where the refusal of the redemption of instruments is prohibited under applicable national law for these types of institutions, it is essential that the provisions governing the instruments give the institution the ability to defer their redemption and limit the amount to be redeemed. …'

17. Article 10 of that regulation, entitled 'Limitations on redemption of capital instruments issued by mutuals, savings institutions, cooperative societies and similar institutions for the purposes of Article 29(2)(b) of Regulation (EU) No 575/2013 and Article 78(3) of Regulation (EU) No 575/2013', provides as follows:

'1. An institution may issue Common Equity Tier 1 instruments with a possibility to redeem only where such possibility is foreseen by the applicable national law.

2. The ability of the institution to limit the redemption under the provisions governing capital instruments as referred to in Article 29(2)(b) and 78(3) of Regulation (EU) No 575/2013, shall encompass both the right to defer the redemption and the right to limit the amount to be redeemed. The institution shall be able to defer the redemption or limit the amount to be redeemed for an unlimited period of time pursuant to paragraph 3.

3. The extent of the limitations on redemption included in the provisions governing the instruments shall be determined by the institution on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to:

(a) the overall financial, liquidity and solvency situation of the institution;

(b) the amount of Common Equity Tier 1 capital, Tier 1 and total capital compared to the total risk exposure amount calculated in accordance with the requirements laid down in point (a) of Article 92(1) of Regulation (EU) No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive 2013/36/EU and the combined buffer requirement as defined in point (6) of Article 128 of that Directive.'

5 Delegated Regulation No 241/2014 implements a number of provisions of Regulation No 575/2013, in particular, the third subparagraph of Article 28(5) and the third subparagraph of Article 29(6) of that regulation. In accordance with recital 1 of Regulation No 241/2014, the Commission considered that it was desirable to include all the regulatory technical standards on own funds required by Regulation No 575/2013 in a single regulation.

3. Regulation No 1024/2013

18. The first paragraph of Article 1 of Regulation No 1024/2013 'confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage'.

19. Article 6(1) of that regulation states as follows:

'The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. The ECB shall be responsible for the effective and consistent functioning of the SSM.'[6]

20. Article 6(4) of that regulation provides:

'In relation to the tasks defined in Article 4 except for points (a) and (c) of paragraph 1 thereof, the ECB shall have the responsibilities set out in paragraph 5 of this Article and the national competent authorities shall have the responsibilities set out in paragraph 6 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article, for the supervision of the following credit institutions, financial holding companies or mixed financial holding companies, or branches, which are established in participating Member States, of credit institutions established in non-participating Member States:

— those that are less significant on a consolidated basis, at the highest level of consolidation within the participating Member States, or individually in the specific case of branches, which are established in participating Member States, of credit institutions established in non-participating Member States. The significance shall be assessed based on the following criteria:

  (i) size;

  (ii) importance for the economy of the Union or any participating Member State;

  (iii) significance of cross-border activities.

With respect to the first subparagraph above, a credit institution or financial holding company or mixed financial holding company shall not be considered less significant, unless justified by particular circumstances to be specified in the methodology, if any of the following conditions is met:

(i) the total value of its assets exceeds EUR 30 billion;

(ii) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of its assets is below EUR 5 billion;

(iii) following a notification by its national competent authority that it considers such an institution of significant relevance with regard to the domestic economy, the ECB takes a decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.

6 SSM stands for Single Supervisory Mechanism.

The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries in more than one participating Member [State] and its cross-border assets or liabilities represent a significant part of its total assets or liabilities subject to the conditions laid down in the methodology.

Those for which public financial assistance has been requested or received directly from the EFSF [7] or the ESM [8] shall not be considered less significant.

Notwithstanding the previous subparagraphs, the ECB shall carry out the tasks conferred on it by this Regulation in respect of the three most significant credit institutions in each of the participating Member States, unless justified by particular circumstances.'

B. Italian Law

21. Chapter V of the Testo unico delle leggi in materia bancaria e creditizia (the consolidated banking law; 'CBL'), referred to in the decreto legislativo 1°settembre 1993, n. 385[9] (Legislative Decree No 385 of 1 September 1993; 'Legislative Decree No 385'), regulates cooperative banking activity, including the activity of people's banks. This chapter was amended following the adoption of decreto-legge 24 gennaio 2015, n. 3 (Decree-Law No 3 of 24 January 2015; 'Decree-Law No 3/2015').

22. Article 28(2-ter) was introduced as an amendment to Legislative Decree No 385, in its version applicable after 24 January 2015, by decreto-legge 24 gennaio 2015, n. 3, convertito, con modificazioni, dalla legge 24 marzo 2015 n. 33[10] (Decree-Law No 3 of 24 January 2015, converted, with amendments, by Law No 33 of 24 March 2015; 'Law No 33/2015'). This provision was itself subsequently amended by decreto legislativo 12 maggio 2015, n. 72, recante attuazione della direttiva 2013/36/UE[11] (Legislative Decree No 72 transposing Directive 2013/36; 'Legislative Decree No 72/2015'), and states:

'In people's banks …, the right to redemption of shares in the case of withdrawal, including following a bank's conversion, the death or the exclusion of the shareholder, shall be limited according to the requirements imposed by the Banca d'Italia, even by way of derogation from legal provisions, where this is necessary to ensure that the shares can be included in the bank's Tier 1 regulatory capital. For the same purposes, the Banca d'Italia may limit the right of redemption of other capital instruments issued.'

23. Article 29 of Legislative Decree No 385[12] states:

'2-bis. The assets of a people's bank may not exceed EUR 8 billion. If the bank is the parent company of a banking group, that limit is determined on a consolidated basis.

2-ter. If the limit stated in paragraph 2-bis is exceeded, the board of directors shall convene a meeting of shareholders to determine the appropriate course of action. If, within one year of the point when the limit was exceeded, the assets have not been reduced to below the threshold and no decision has been made to convert the bank into a company limited by shares … or to liquidate it, the Banca d'Italia, taking into account the circumstances and the amount by which the threshold has been exceeded,

7 ESFS stands for European System of Financial Supervision.

8 ESM stands for European Stability Mechanism.

9 GURI No 230 of 30 November 1993.

10 GURI No 70 of 25 March 2015 — Ordinary Supplement 15.

11 GURI No 134 of 12 June 2015.

12 In the version applicable following the adoption of Decree-Law No 3/2015, converted, with amendments, by Law No 33/2015.

may impose a ban on the exercise of new operations …, or the measures laid down in Title IV, Chapter I, Section I, or may propose that the European Central Bank revoke the authorisation to undertake banking activities and that the Minister for the Economy and Finance initiate compulsory administrative liquidation.

…

2-quater. The Banca d'Italia shall impose implementing provisions for this article.

…'

24. Article 1(2) of Decree-Law No 3/2015[13] states:

'When this decree is first applied, the people's banks authorised at the time when this decree comes into force shall make the necessary adaptations to the provisions laid down in Article 29(2-bis) and (2-ter) of Legislative Decree No 385 of 1 September 1993, introduced by this article, within 18 months of the date of entry into force of the implementing provisions imposed by the Banca d'Italia in accordance with Article 29.'

25. The decreto-legge 25 luglio 2018, n. 91, convertito con modificazioni dalla legge 21 settembre 2018, n. 108[14] (Decree-Law No 91, 25 July 2018, converted, with amendments, by Law No 108, 21 September 2018) extended the deadline laid down in Article 1(2) of Decree-Law No 3/2015 to 31 December 2018.

26. In its implementation of Articles 28 and 29 of Legislative Decree No 385, the Banca d'Italia amended its circolare n. 285 (Circular No 285) of 17 December 2013 on supervisory provisions for banks. In its ninth update of 9 June 2015, which introduced that amendment ('the 9th update to Circular No 285'), the Banca d'Italia established the following requirements:

'[1.] [The people's banks concerned], where they have assets in excess of the threshold of EUR 8 billion, must ensure compliance with the provisions laid down in Article 29(2-bis) and (2-ter) of the [CBL] within 18 months of the entry into force of the implementing provisions imposed by the Banca d'Italia.'

…

[2.] The amendments to articles of association associated with the reform can be classified in three separate categories:

(a) amendments to articles of association designed merely to adapt to the legal provisions …;

(b) amendments to articles of association that are compulsory but not designed merely to adapt to the legal provisions …;

(c) optional amendments to articles of association …

…

13 As converted by Law No 33/2015.

14 GURI No 220, of 21 September 2018.

[3.] The category described under (a) covers amendments to articles of association intended to:

— introduce into the articles the clause attributing to the body responsible for strategic supervision, on the basis of a proposal from the body responsible for management, after consulting the body responsible for control, the option to limit or defer, in full or in part and without any time limits, redemption of the shares held by an outgoing shareholder and other capital instruments that can be included in CET1, [15] even by way of derogation from the provisions of the codice civile (Civil Code) and other legal requirements and without prejudice to the authorisations provided by the supervisory authorities in relation to redemption of capital instruments, where applicable. The clause must also specify that the determinations of the extent of the deferment and the scope of the limitation on redemption of the shares and other capital instruments are the responsibility of the body responsible for strategic supervision, taking into account the prudential situation of the bank, in accordance with the requirements imposed by the Banca d'Italia …

…

[4.] People's banks with assets in excess of the threshold of EUR 8 billion must make, within the transitional period and before any conversion, at least the compulsory amendments to their articles indicated in (a) and (b).

III. The main proceedings and the questions referred for a preliminary reference

27. By three separate applications lodged at first instance before the Tribunale Amministrativo Regionale per il Lazio (Regional Administrative Court of Lazio, Italy), some shareholders of people's banks, the Associazione difesa utenti servizi bancari finanziari postali assicurativi — Adusbef (association for the defence of users of banking, financial, postal and insurance services) and the Federazione Nazionale di Consumatori ed Utenti — Federconsumatori (national federation of consumers and users) challenged certain acts of the Banca d'Italia including, in particular, the 9th update to Circular No 285.

28. The Tribunale Amministrativo Regionale per il Lazio (Regional Administrative Court of Lazio) rejected those applications by judgments Nos 6548/2016, 6544/2016 and 6540/2016 of 7 June 2016.

29. The appellants in the main proceedings appealed judgments Nos 6548/2016, 6544/2016 and 6540/2016 before the Consiglio di Stato (Council of State). The Consiglio di Stato (Council of State) suspended the effects of the 9th update of Circular No 285 and raised questions relating to the constitutionality of Decree-Law No 3/2015.

30. By judgment No 99/2018, the Corte Costituzionale (Constitutional Court, Italy) rejected as unfounded the questions raised by the Consiglio di Stato (Council of State) relating to the constitutionality of Decree-Law No 3/2015.

31. Following the resumption of the proceedings before the Consiglio di Stato (Council of State), that court, by Order No 3645/2018, extended the suspensions previously ordered until the date of publication of the judgment settling the dispute on the merits. [16]

15 CET1 stands for Common Equity Tier 1.

16 With the exception of the 18-month period laid down in Article 1(2) of Decree-Law No 3/2015, which had already been replaced by another date, namely that of 31 December 2018.

32. In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Article 29 of [Regulation No 575/2013]…, Article 10 of [Delegated Regulation No 241/2014], and Articles 16 and 17 of the Charter …, with reference to Article 6(4) of [Regulation No 1024/2013], preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015, converted, with amendments, by Law No 33/2015 (and currently also Article 1(15) of Legislative Decree No 72/2015, which has replaced Article 28(2-ter), [CBL], substantially reproducing the text of Article 1(1)(a) of Decree-Law No 3/2015, as converted, with amendments that are not relevant to the present case), which imposes an asset threshold above which a people's bank must be converted into a company limited by shares, setting that limit at EUR 8 billion of assets? Furthermore, do the abovementioned unified European parameters preclude a national provision which, if a people's bank is converted into a company limited by shares, makes it possible for that company to defer or limit, including for an indefinite period, redemption of the shares held by the withdrawing shareholder?

(2) Do Articles 3 and 63 et seq. TFEU, on competition in the internal market and free movement of capital, preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015 (converted, with amendments, by Law No 33/2015), which limits the exercise of cooperative banking activities within a given asset limit, requiring the bank concerned to be converted into a company limited by shares if it should exceed that limit?

(3) Do Articles 107 et seq. TFEU on State aid preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015, converted, with amendments, by Law No 33/2015 (and currently also Article 1(15) of Legislative Decree No 72/2015, which has replaced Article 28(2-ter), [CBL], substantially reproducing the text of Article 1(1)(a) of Decree-Law No 3/2015, as converted, with amendments that are not relevant to the present case), which requires a people's bank to be converted into a company limited by shares if it exceeds a certain asset threshold (set at EUR 8 billion), establishing restrictions on the redemption of the shares held by the shareholder in the event of withdrawal, to avoid the possible liquidation of the converted bank?

(4) Do the combined provisions of Article 29 of [Regulation No 575/2013] and Article 10 of [Delegated Regulation No 241/2014] preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015 (converted, with amendments, by Law No 33/2015), as interpreted by the Corte Costituzionale (Constitutional Court) in Judgment No 99/2018, which permits a people's bank to defer redemption for an unlimited period and to limit the associated amount in full or in part?

(5) Where, in its interpretation, the Court of Justice holds that the European legislation is compatible with the interpretation asserted by the opposing parties, can the Court of Justice assess the lawfulness, in European terms, of Article 10 of [Delegated Regulation No 241/2014], in the light of Articles 16 and 17 of the Charter …, supplemented, also in the light of Article 52(3) of that Charter … and the case-law of the European Court of Human Rights on Article 1 of the First Additional Protocol to the European Convention on Human Rights?'

IV. Procedure before the Court

33. By order dated 18 January 2019, the President of the Court rejected the request of the referring court that the present case be dealt with in accordance with the expedited procedure pursuant to Article 105(1) of the Rules of Procedure of the Court.

34. Written observations were submitted by OC and Others, the Unione di Banche Italiane, the Banca d'Italia, the Banca Popolare di Sondrio, Amber Capital Italia and Amber Capital UK ('Amber Capital'), the Italian Government and the European Commission. The Court decided to proceed to judgment without an oral hearing.

V. Analysis

A. Preliminary remarks

35. The present request for a preliminary reference is particularly striking as all the interveners, save OC and Others and the Banca Popolare di Sondrio, have argued that some or, indeed, all of the questions referred by the Consiglio di Stato (Council of State) are in whole or in part inadmissible.

36. Thus, the Unione di Banche Italiane considers that all the questions are inadmissible in whole or in part; the Banca d'Italia and Amber Capital consider that the first three questions are inadmissible; the Italian Government considers that the first and fifth questions are inadmissible and that the Court lacks jurisdiction to answer the second question. The European Commission considers that part of the second question and the fifth question as a whole are inadmissible.

37. It is clear from the file before the Court that the main proceedings have been brought, at first instance, before the Tribunale Amministrativo Regionale per il Lazio (Regional Administrative Court of Lazio), on appeal, before the Consiglio di Stato (Council of State) and that the latter jurisdiction made a reference to the Corte Costituzionale (Constitutional Court). The present preliminary reference was made by the Consiglio di Stato (Council of State), which would appear to be the national court ruling at last instance in the context of the main proceedings.

38. In that regard, it is settled case-law that if a national court against whose decisions there is no judicial remedy finds that interpretation of EU law is necessary to enable it to decide a case before it, the third paragraph of Article 267 TFEU obliges it to make a reference to the Court for a preliminary ruling. [17]

39. In paragraphs 32 to 34 of its judgment of 15 March 2017, *Aquino* (C-3/16, EU:C:2017:209), the Court recalled that the obligation to refer a question to the Court for a preliminary ruling under the third paragraph of Article 267 TFEU is based on cooperation, established with a view to ensuring the proper application and uniform interpretation of EU law in all the Member States, between national courts, in their capacity as courts responsible for the application of EU law, and the Court. The obligation to make a reference laid down by the third paragraph of Article 267 TFEU is intended in particular to prevent a body of national case-law that is not in accordance with the rules of EU law from being established in any of the Member States. Moreover, a court adjudicating at last instance is by definition the last judicial body before which individuals may assert the rights conferred on them by EU law. Courts adjudicating at last instance have the task of ensuring the uniform interpretation of rules of law at national level. [18]

17 Judgments of 28 July 2016, *Association France Nature Environnement* (C-379/15, EU:C:2016:603, paragraph 47), and of 4 October 2018, *Commission* v *France (Advance payment)* (C-416/17, EU:C:2018:811, paragraphs 108 et seq.).

18 The circumstances in which a court against whose decisions there is no judicial remedy under national law is required to bring a question before the Court were outlined by the Court in the judgment of 6 October 1982, *Cilfit and Others* (C-283/81, EU:C:1982:335) and recently recalled by the Court in its judgments of 28 July 2016, *Association France Nature Environnement* (C-379/15, EU:C:2016:603, paragraphs 47 to 50), and of 4 October 2018, *Commission* v *France (Advance payment)* (C-416/17, EU:C:2018:811, paragraphs 108 et seq.). Thus a court against whose decisions there is no judicial remedy under national law is required, when a question of EU law is raised before it, to bring the matter before the Court, unless it has established that the correct application of EU law *is so obvious as to leave no scope for any reasonable doubt*. The existence of such a possibility must be assessed in the light of the specific characteristics of EU law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the European Union.

40. According to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling.[19]

41. The Court may, however, refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, or where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.[20]

42. It must be noted that Article 94 of the Rules of Procedure of the Court lays down requirements in respect of the content for a request for a preliminary ruling.

43. In its order of 12 May 2016, *Security Service and Others* (C-692/15 to C-694/15, EU:C:2016:344, paragraph 18),[21] the Court stressed that the requirements concerning the content of a request for a preliminary ruling are explicitly set out in Article 94 of the Rules of Procedure of which the referring court is supposed, in the context of the cooperation instituted by Article 267 TFEU, to be aware and which it is bound *scrupulously* to observe.[22]

44. As will be seen from a further reading of this opinion, I have found that a number of questions referred by the Consiglio di Stato (Council of State) unfortunately fail to comply with the requirements laid down in Article 94 of the Rules of Procedure of the Court in a completely satisfactory manner. This is regrettable as this Court cannot, in my view, give a useful answer to questions which the Consiglio di Stato (Council of State) was bound to pose in order to clarify the interpretation of EU law. In effect, the Court has not, in my view, been placed in a position to clarify certain questions on the interpretation of EU law which gave rise to reasonable doubt on the part of the Consiglio di Stato (Council of State) and prompted it to make a request for a preliminary ruling at least so far as aspects of the questions posed are concerned.

B. First question

45. The first question referred by the Consiglio di Stato (Council of State) is divided into two parts.

19 Judgment of 22 September 2016, *Microsoft Mobile Sales International and Others* (C-110/15, EU:C:2016:717, paragraph 18).

20 Judgment of 22 September 2016, *Microsoft Mobile Sales International and Others* (C-110/15, EU:C:2016:717, paragraph 19).

21 This case also concerned a request for a preliminary reference from the Consiglio di Stato (Council of State). See also order of 8 June 2017, *Lg Costruzioni* (C-110/16, not published, EU:C:2017:446).

22 The Court continued in paragraphs 19 to 21 of its order by stating that it 'has observed time and again that the necessity of providing an interpretation of EU law that will be of use to the national court means that the national court must define the factual and legislative context of the questions it asks or, at the very least, explain the factual circumstances on which those questions are based … The court making the reference must also set out the precise reasons that led it to raise the question of the interpretation of certain provisions of EU law and to consider it necessary to refer questions to the Court for a preliminary ruling. The Court has previously held that it is essential that the national court should give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and on the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it … It is important to note that the information supplied and the questions asked in orders for reference must enable the Court not only to give useful answers, but also to give the governments of the Member States and other interested parties the chance to submit observations pursuant to Article 23 of the Statute of the Court of Justice of the European Union. It is for the Court to ensure that that opportunity is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties, accompanied by a translation in the official language of each Member State, to the exclusion of any case file that may be sent to the Court by the referring court …'.

46. By the first part of its first question, the Consiglio di Stato (Council of State) asks the Court, in substance, whether Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014, Articles 16 and 17 of the Charter and Article 6(4) of Regulation No 1024/2013, preclude national provisions which impose an asset threshold of EUR 8 billion above which a people's bank must be converted into a company limited by shares. [23]

47. By the second part of its first question the Consiglio di Stato (Council of State) asks the Court, in substance, whether Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014, Articles 16 and 17 of the Charter and Article 6(4) of Regulation No 1024/2013, preclude a national provision which, upon conversion of a people's bank into a company limited by shares, makes it possible for that company to defer or limit, including for an indefinite period, redemption of the shares held by the withdrawing shareholder.

1. Admissibility of the first question

48. The Unione di Banche Italiane, the Banca d'Italia, Amber Capital and the Italian Government consider that the first question is either in whole or in part inadmissible or, alternatively, that the Court does not have jurisdiction to answer it.

49. I feel bound to observe that the referring court has proffered very little information as to what prompted it to inquire about the interpretation of the abovementioned provisions of EU law in the context of the adoption by the Italian legislature and the Banca d'Italia of the threshold of EUR 8 billion. It noted that the appellants consider that the threshold is excessively low and that a higher threshold should have been set in the light of those applicable at EU level. In that regard, the referring court merely stated that it had doubts as to the well-founded nature of this argument and that it agrees with the analysis of the Corte Costituzionale (Constitutional Court), which found that the setting of the threshold falls within the free decision-making powers of the national legislature in the light of the aims of the national provisions in question. The referring court also highlighted the close connection between the threshold and the limits imposed on redemption of shares following the conversion of a people's bank into a company limited by shares.

50. In my view, the first question as a whole is inadmissible as the referring court has failed to comply with Article 94(c) of the Rules of Procedure of the Court. In that regard, I consider that the referring court failed to provide 'a statement of the reasons which prompted [it] to inquire about the interpretation or validity of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings'. Thus, aside from the very summary explanation as to what prompted the referring court to inquire about the interpretation of Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014, Articles 16 and 17 of the Charter and Article 6(4) of Regulation No 1024/2013, there is no explanation in the request for a preliminary ruling on the relationship between those provisions of EU law and the national legislation applicable to the main proceedings.

23 The referring court does not refer in this question to the other possible alternatives provided by Italian law of reducing the capital of a people's bank or winding it up.

2. First part of the first question

(a) Jurisdiction of the Court

51. In addition to the question of admissibility of the first question as a whole, I consider that it is necessary to examine whether the Court has jurisdiction to provide an answer to the first part of the first question as regards more particularly the interpretation sought by the referring Court of Articles 16 and 17 of the Charter in connection with the establishment by the Italian legislature and the Banca d'Italia of the threshold of EUR 8 billion.

52. It is settled case-law that the requirements flowing from the protection of fundamental rights are binding on Member States whenever they implement European Union law, and they are bound, to the fullest extent possible, to apply the law in accordance with those requirements. Article 51(1) of the Charter states, however, that its provisions are addressed 'to the Member States only when they are implementing Union law'. Moreover, by virtue of Article 6(1) TEU, the Charter does not establish any new power for the Union or modify its powers.[24]

53. Given that the order for reference does not contain any specific information to show that the national provisions in question establishing the EUR 8 billion threshold are measures implementing EU law within the meaning of Article 51(1) of the Charter or are connected in any other way with that law, I consider that the Court has no jurisdiction to provide an interpretation of Articles 16 and 17 of the Charter in the context of the first part of the first question.

(b) Substance of the first part of the first question

54. If, however, the Court were to consider (contrary to my own view) that the first question is admissible,[25] I would then take the view that Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014 and Article 6(4) of Regulation No 1024/2013 neither require nor preclude a national provision which imposes an asset threshold of EUR 8 billion above which a people's bank must be converted into a company limited by shares. Indeed, none of the EU provisions in question contain any rules establishing asset thresholds for banks or similar institutions which would require them to be converted into a company limited by shares.

55. In that regard, Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 establish rules concerning the qualification of capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions as Common Equity Tier 1 and, in particular, the conditions regarding the redemption of those capital instruments. Those provisions do not establish any asset or capital threshold.

56. Moreover, as regards the relevance of Regulation No 1024/2013, it is clear from the first paragraph of Article 1 of that regulation that it confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. Article 4(1) of that regulation provides for the exclusive competence of the ECB to carry out, for prudential supervisory purposes, nine tasks in relation to all credit institutions established in participating Member States. The framework for the exercise of those tasks is laid down in Article 6 of Regulation No 1024/2013 entitled 'Cooperation within a [single supervisory mechanism (SSM)]'.

24 See by analogy, order of 12 November 2010, *Asparuhov Estov and Others* (C-339/10, EU:C:2010:680, paragraphs 12 to 14 and the case-law cited).

25 Even if the Court were to consider that the first part of the first question is admissible, I consider, as indicated at points 52 to 54 of this Opinion, that the Court has no jurisdiction to provide an interpretation of Article 16 and 17 of the Charter in this context.

57. Article 6(4) of Regulation No 1024/2013 lays down the criteria for establishing whether the exercise of nine tasks in question shall be the responsibility of the ECB or whether the national competent authorities shall assist the ECB in carrying out the tasks conferred on it by Regulation No 1024/2013.[26] Thus the Court stated in paragraph 40 of the judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB* (C-450/17 P, EU:C:2019:372) that 'in accordance with Article 6(6) of Regulation No 1024/2013, national competent authorities are to carry out and be responsible for the tasks referred to in Article 4(1)(b), (d) to (g) and (i) of that regulation and are authorised to adopt all relevant supervisory decisions in relation to the credit institutions referred to in the first subparagraph of Article 6(4), that is, those which, in accordance with the criteria stated in that latter provision, are "less significant"'.

58. One of the parameters established by Article 6(4) of Regulation No 1024/2013 for determining whether a credit institution is not 'less significant' is whether the total value of its assets exceeds EUR 30 billion. That EUR 30 billion threshold however bears no relation to the EUR 8 billion threshold fixed by the Italian legislature and the Banca d'Italia in question in the main proceedings.

59. I therefore consider that Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014 and Article 6(4) of Regulation No 1024/2013 neither require nor preclude a national provision which imposes an asset threshold of EUR 8 billion above which a people's bank must be converted into a company limited by shares.

(c) Substance of the second part of the first question and the fourth question

60. By its fourth question, the referring court asks the Court whether Article 29 of Regulation No 575/2014 and Article 10 of Delegated Regulation No 241/2014 preclude a national provision which permits a people's bank converted into a company limited by shares to defer redemption of the shares held by a shareholder for an unlimited period and to limit the associated amount in full or in part.

61. Given that the second part of the first question and the fourth question both concern the rules on the redemption of the shares held by a shareholder in a people's bank following its conversion into a company limited by shares, it may be convenient to deal with these questions together. By its questions the referring court asks whether and to what extent a people's bank which has been converted into a company limited by shares has the right pursuant, inter alia, to Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 to limit and defer the redemption of shares.

62. In their written observations before this Court, all the interveners, save OC and Others, consider that Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 do not preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015 (converted, with amendments, by Law No 33/2015), as interpreted by the Corte Costituzionale (Constitutional Court) in its judgment No 99/2018, which permits a people's bank to defer redemption for an unlimited period and to limit the associated amount in full or in part.

63. By contrast, OC and Others consider that Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 preclude a national provision which permits a people's bank to defer redemption for an unlimited period and to limit the associated amount in full or in part. They consider, in particular, that the term 'for an unlimited period of time' in the second sentence of Article 10(2) of Delegated Regulation No 241/2014 does not refer to the possibility of deferring redemption but only to the possibility of limiting the amount to be redeemed.

26 In its judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB* (C-450/17 P, EU:C:2019:372), the Court stated that the national competent authorities assist the ECB by a decentralised implementation of some of those tasks in relation to less significant credit institutions.

64. The question which must be addressed therefore is whether and to what extent an institution may defer for an unlimited period of time the redemption of capital and to what extent it may limit the amount to be redeemed. I propose to examine this matter in the light of, first, Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014, second, Article 6(4) of Regulation No 1024/2013 and, third, Articles 16 and 17 of the Charter.

(1) Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 — Rules on 'Own funds', in particular, Common Equity Tier 1 capital

65. In my view, in order to furnish a correct interpretation of Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 it is necessary not only to examine the wording of those provisions but also the context in which they occur and the objectives pursued by the regulations in question.[27]

66. Regulation No 575/2013 and Directive 2013/36[28] form the legal framework governing the access to the activity, the supervisory framework and the prudential rules for credit institutions and investment firms,[29] which are collectively referred to under Regulation No 575/2013 as 'institutions'.[30] According to its recital 7, Regulation No 575/2013 contains, inter alia, the prudential requirements for institutions that relate to the functioning of banking and financial services markets and are meant to ensure the financial stability of the operators on those markets as well as a high level of protection of investors and depositors.

67. Regulation No 575/2013 and Directive 2013/36 are based on the final measures published by the Basel Committee on Banking Supervision (BCBS) in December 2010, which is known as the Basel III framework.[31] The Basel III framework, which was adopted in the wake of the global financial crisis of 2007-2008, sought to address certain failings in the previous regulatory framework for banks in order to make them more resilient in times of stress. Part of that reform included not only increasing the level of capital requirements on banks but also requiring improvements in the quality of the banks' capital.[32] These requirements governing both the quantity and quality of banks' capital were adopted in order to ensure that they have the financial capacity to absorb certain levels of risk.[33]

68. Article 1(a) of Regulation No 575/2013 provides that that regulation lays down uniform rules concerning general prudential requirements in respect of the 'own funds' of an institution. Article 4(1)(118) of Regulation No 575/2013 states that 'own funds' 'means the sum of Tier 1 capital and Tier 2 capital'. Pursuant to Article 25 of Regulation No 575/2003, 'the Tier 1 capital of an institution consists of the sum of the Common Equity Tier 1 capital and Additional Tier 1 capital of the institution'.

27 See judgment of 21 May 2015, *Rosselle* (C-65/14, EU:C:2015:339, paragraph 43 and the case-law cited).

28 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338). In paragraph 31 of the judgment of 7 August 2018, *VTB Bank (Austria)* (C-52/17, EU:C:2018:648) the court states that 'as is apparent from recital 2 of Directive 2013/36 and recital 5 of Regulation No 575/2013, that directive and that regulation, which must be read together, lay down the legal framework governing, inter alia, the supervision of and prudential rules applicable to credit institutions'. I would note, however, that Directive 2013/36 would not appear from the file before the Court to be of any specific relevance in the context of the main proceedings or the questions posed by the referring court.

29 See recital 5 of Regulation No 575/2013.

30 See Article 4(3) of Regulation No 575/2013.

31 See recital 1 of Regulation No 575/2013.

32 See recital 1 of Regulation No 575/2013.

33 For example, in accordance with Article 92(1)(a) of Regulation No 575/2013 banks must have a Common Equity Tier 1 capital ratio of 4.5%. The Common Equity Tier 1 capital ratio is the Common Equity Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount. See Article 92(2)(a) of Regulation No 575/2013.

69. Article 26(1)(a) of Regulation No 575/2013 provides that capital instruments which meet the conditions laid down in Article 28 or, where applicable, Article 29, qualify as a Common Equity Tier 1 item. Article 27 of Regulation No 575/2013, entitled 'Capital instruments of mutuals, cooperative societies, savings institutions or similar institutions in Common Equity Tier 1 items', provides that Common Equity Tier 1 items shall include any capital instrument issued by such entities under their statutory terms provided the conditions laid down in Article 28 or, where applicable, Article 29 are met.

70. Article 28 of Regulation No 575/2013 lays down the conditions which must be met in order for capital instruments of an *institution* to qualify as Common Equity Tier 1 instruments and Article 29 of that regulation lays down certain modifications to Article 28 which must be met in order for capital instruments issued by *mutuals, cooperative societies, savings institutions and similar institutions* to qualify as Common Equity Tier 1 instruments. In addition, Article 30(a) of Regulation No 575/2013 provides that where the conditions contained in Articles 28 and 29 of that regulation are not met, the instruments in question shall cease to qualify as Common Equity Tier 1 instruments.

71. It must therefore be stressed that the rules on the qualification of capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions as Common Equity Tier 1 instruments differ somewhat from those applicable in respect of the qualification of the capital instruments of institutions.

72. It is the application of rules on the qualification of capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions as Common Equity Tier 1 instruments and, in particular, Article 29(2)(b) of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 that is in question in the main proceedings.

73. It is clear from Article 28(1)(e), to (g) of Regulation No 575/2013 that in order for capital instruments to qualify as Common Equity Tier 1 instruments those instruments must, inter alia, be perpetual, the principal amount of the instruments may not be reduced or repaid, except, inter alia, in the event of the liquidation of the institution and the provisions governing the instruments may not indicate, inter alia, that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of the institution.

74. Despite these rules which prohibit, in effect, the redemption of shares, Article 29(2) of Regulation No 575/2013 contains specific rules on the redemption of Common Equity Tier 1 instruments issued by mutuals, cooperative societies, savings institutions and similar institutions.

75. Thus Article 29(2)(a) of Regulation No 575/2013 provides that an institution *shall refuse* to redeem Common Equity Tier 1 instruments *unless such a refusal is prohibited or excluded under national law*. It would appear from the file before the Court that such a prohibition is indeed contained in Italian law and that Article 29(2)(b) of Regulation No 575/2013 — which provides, in essence, that if redemption cannot be refused, 'the provisions governing the instruments shall give the institution the ability to *limit* their redemption'[34] — applies to the facts in the main proceedings.

34 Emphasis added. I would note that only the general term 'limit' is used. No reference is made to the ability to 'defer' redemption. In my view, this is because the ability to limit incorporates the ability to defer.

76. The detailed rules on those limitations are contained in Article 10 of Delegated Regulation No 241/2014, which was adopted by the Commission on the basis of the power delegated to it pursuant to Article 29(6) of Regulation No 575/2013. [35]

77. It is clear from the first sentence of Article 10(2) of Delegated Regulation No 241/2014 that the ability of mutuals, cooperative societies, savings institutions and similar institutions to limit the redemption of Common Equity Tier 1 instruments shall encompass *both* the right to defer the redemption and the right to limit the amount redeemed. According to the second sentence of Article 10(2) of Delegated Regulation No 241/2014 the right to defer the redemption and the right to limit the amount redeemed must be exercised by the institution concerned *in accordance with Article 10(3) of that regulation*. In that regard, Article 10(3) of Delegated Regulation No 241/2014 states that the extent of the limitations on redemption shall be determined on the basis of *the prudential situation of the institution at any time* and indicates a number of parameters or requirements [36] which must be complied with in order for redemption to proceed.

78. In my view, it is clear from Article 29 of Regulation No 575/2013 and Article 10(2) and (3) of Delegated Regulation No 241/2014 that the EU legislature considered that the public interest in ensuring the appropriate prudential safeguards in respect of the relevant credit institution prevails over the private interests of shareholders seeking to redeem their shares. Accordingly, redemption can only occur in conformity with the requirements of Article 10(3) of Delegated Regulation No 241/2014.

79. It must be stressed, however, that the right to defer and limit redemption is not unfettered; rather, it is subject to the prudential situation of an institution. Once the prudential requirements of Article 10(3) of Delegated Regulation No 241/2014 are fully satisfied, redemption may occur.

80. Given the fact that the redemption of shares may only take place to the extent that the prudential situation of an institution '*at any time*' [37] so permits, I consider that Article 10(2) of Delegated Regulation No 241/2014 must be interpreted in such a manner as to allow the relevant institution to comply with this mandate at any given moment. As the prudential situation of an institution is not static and may evolve over time, I consider that the EU legislature drafted Article 10(2) of Delegated Regulation No 241/2014 in a broad manner in order to grant the institution sufficient flexibility in order to comply with the requirements imposed by Article 10(3) of Delegated Regulation No 241/2014. Thus, the redemption of shares may be deferred for an unlimited period *until such time* as the prudential requirements of Article 10(3) of Delegated Regulation No 241/2014 are met and amounts to be redeemed may also be limited in that regard. [38]

81. While the essence of the investors' property interests in the relevant shareholdings must, of course, be respected — after all, Article 17(1) of the Charter requires no less — these investors must also be taken to be aware of the fact that investment in a credit institution operating in a highly regulated market in accordance with the terms of its banking licence brings its own particular constraints.

35 Recital 128 of Regulation No 575/2013 provides that 'the Commission should adopt draft regulatory technical standards developed by EBA in the areas of mutuals, cooperative societies, savings institutions or similar institutions …, by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of [Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12)]. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission and EBA should ensure that those standards and requirements can be applied by all institutions concerned in a manner that is proportionate to the nature, scale and complexity of those institutions and their activities'.

36 The parameters or requirements indicated in Article 10(3) of Delegated Regulation No 241/2014 are not limited in nature, thus allowing, in my view, the relevant institution to assess its prudential situation on the basis of other parameters or requirements.

37 See Article 10(3) of Delegated Regulation No 241/2014. Emphasis added.

38 Compliance with such rules may be reviewed by national courts in order to ensure that shareholders are not 'unfairly' locked in.

There is a clear public interest in ensuring that core equity investment in a credit institution is not abruptly withdrawn, not least at a time when the financial stability of the institution may be itself placed under stress were this to happen. This is plainly the thinking behind the provisions of Article 10(3) of Delegated Regulation No 241/2014.

82. I therefore consider that Article 29 of Regulation No 575/2013 and Article 10(2) of Delegated Regulation No 241/2014 do not preclude a national provision which permits a people's bank to defer redemption for an unlimited period and to limit the associated amount in full or in part until such time and to the extent that the prudential requirements of Article 10(3) of Delegated Regulation No 241/2014 are met.

(2) Article 6(4) of Regulation No 1024/2013

83. Given that Article 6(4) of Regulation No 1024/2013 lays down the criteria for establishing whether the exercise of the nine tasks listed in Article 4(1) of that regulation should be the responsibility of the ECB or whether the national competent authorities should rather assist the ECB in carrying out the tasks conferred on it by Regulation No 1024/2013, I do not see, and the referring court has not itself explained, the relevance of that provision in the context of the redemption of shares in accordance with Article 29 of Regulation No 575/2013 and Article 10(2) and (3) of Delegated Regulation No 241/2014.

(3) Articles 16 and 17 of the Charter

84. In paragraphs 41 to 46 of the judgment of 22 January 2013, *Sky Österreich* (C-283/11, EU:C:2013:28), the Court recalled that the protection afforded by Article 16 of the Charter covers the freedom to exercise an economic or commercial activity, freedom of contract and free competition. Moreover, in accordance with the Court's case-law, the freedom to conduct a business is not absolute, but must rather be viewed in relation to its social function. On the basis of that case-law and in the light of the wording of Article 16 of the Charter, which differs from the wording of the other fundamental freedoms laid down in Title II thereof, yet is similar to that of certain provisions of Title IV of the Charter, the freedom to conduct a business may properly be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest.

85. By virtue of Article 17(1) of the Charter everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions and no one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. In addition, the use of property may be regulated by law in so far as is necessary in the general interest.

86. Given that the rights guaranteed by Articles 16 and 17(1) of the Charter are not absolute, their exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union. In accordance with Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms and, in compliance with the principle of proportionality, must be necessary and actually meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

87. In order to avoid repetition, I propose to examine the possibility of limiting the rights recognised and protected by Articles 16 and 17(1) of the Charter in the context of the second question together with the justification of restrictions to the freedom of establishment and/or the free movement of capital. [39]

C. Second question

88. By its second question, the referring court seeks to ascertain whether Article 3 TFEU on competition in the internal market and Articles 63 et seq. TFEU on the free movement of capital preclude national provisions which impose an asset threshold on the exercise of banking activities by a people's bank and require the people's bank in question to be converted into a company limited by shares if it should exceed that threshold.

89. The referring court notes that the appellants in the main proceedings consider that the threshold of EUR 8 billion is incompatible with the rules on the internal market and the free movement of capital. They consider that such a low threshold does not make it possible to redefine the parameters of the banks in question in a manner that is genuinely in line with the objectives pursued by those rules. The referring court considers, however, that the appellants have not provided convincing arguments in support of their position that the organisational and functional structure of a people's bank whose dimensions cease to be small is not detrimental to satisfactory compliance with the prudential rules on the sector in question.

90. The Unione di Banche Italiane, the Banca d'Italia and Amber Capital consider that the second question is inadmissible as the referring court has failed to indicate how the national rules in question restrict free movement. The Italian Government considers that the Court does not have jurisdiction to answer this question as the national provisions in question do not concern the internal market but only the Italian market. It considers that it must be demonstrated that the national provisions have a cross-border effect. The Commission considers that the second question is inadmissible in respect of the part concerning Article 3 TFEU.

91. It is unclear, as indicated by the Commission in its observations, from the request for a preliminary ruling what the relevance of Article 3 TFEU is in the context of the second question posed by the referring court. Article 3(1)(a) TFEU provides that the *Union will have exclusive competence* in the establishing of the competition rules necessary for the functioning of the internal market.

92. I therefore consider that this part of the second question is inadmissible for failure to comply with Article 94(c) of the Rules of Procedure of the Court, as the referring court has failed to provide a statement of the reasons which prompted it to inquire about the interpretation of Article 3(1)(a) TFEU, and the relationship between that provision and Article 1 of Decree-Law No 3/2015 (converted, with amendments, by Law No 33/2015) cited in the referring court's second question.

93. As regards the interpretation of Articles 63 et seq. TFEU on the free movement of capital sought by the referring court, that court noted that the appellants before it claimed that the establishment of a low asset threshold of EUR 8 billion which, when exceeded, requires a people's bank to convert itself into a company limited by shares in order to maintain its banking activity may create unfavourable conditions for maintaining such an organisational model and would place the remaining people's banks — which must operate within excessively narrow dimensional limits — in a less favourable position compared to other similar bodies in other Member States.

39 When examining whether a restriction imposed by national law on the free movement of capital or freedom of establishment is justified on the basis, inter alia, of overriding reasons in the public interest, the compatibility of the contested provision with EU law must be examined in the light both of the exceptions to the free movement of capital or freedom of establishment provided for by the FEU Treaty and the Court's case-law, on the one hand, and of the fundamental rights guaranteed by the Charter, on the other hand (see, to that effect, judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)* (C-235/17, EU:C:2019:432, paragraphs 59 to 66 and the case-law cited).

94. I cannot avoid observing that this part of the request for a preliminary reference on Article 63 TFEU seems to be particularly laconic.

95. It must be noted that the Consiglio di Stato (Council of State) has specifically referred to Article 63 TFEU on the free movement of capital in its second question. The Commission however has noted that both Article 49 TFEU on the freedom of establishment and Article 63 TFEU on the free movement of capital could be applicable, *in abstracto*, in respect of the national rules applicable to people's banks. It added, however, that given the characteristics of people's banks and, in particular, the ceiling placed on the number of shares per shareholder, it is difficult to imagine how Article 49 TFEU would be applicable. The Italian Government considers that given that the national provisions in question relate to the legal form of a credit institution, Article 49 TFEU on the freedom of establishment would be applicable if an international dimension were present.

96. It is clear from settled case-law that in order to determine whether Article 49 TFEU on the freedom of establishment and/or Article 63 TFEU on the free movement of capital could be applicable the purpose of the legislation concerned must be taken into consideration. [40]

97. In paragraphs 39 to 44 of the judgment of 11 November 2010, *Commission* v *Portugal* (C-543/08, EU:C:2010:669), the Court noted that national provisions which apply to holdings by nationals of the Member State concerned in the capital of a company established in another Member State, giving them definite influence on the company's decisions and allowing them to determine its activities, fall within the ambit *ratione materiae* of Article 49 TFEU on freedom of establishment. Direct investments, that is to say, investments of any kind made by natural or legal persons which serve to establish or maintain lasting and direct links between the persons providing the capital and the company to which that capital is made available in order to carry out an economic activity, fall within the ambit of Article 63 TFEU on the free movement of capital. That objective presupposes that the shares held by the shareholder enable him to participate effectively in the management of that company or in its control. National legislation not intended to apply only to those shareholdings that enable the holder to have a definite influence on a company's decisions and to determine its activities but which applies irrespective of the size of the holding which the shareholder has in a company may fall within the ambit of both Article 49 TFEU and Article 63 TFEU.

98. In the absence of any criteria in the request for a preliminary reference which would enable me to determine which of the two fundamental freedoms is applicable, or indeed whether both are applicable, I propose to examine this question in the light of both Article 49 TFEU and Article 63 TFEU.

99. In my view, national provisions which impose an asset threshold on the exercise of banking activities by a people's bank and require that bank to be converted into a company limited by shares if it should exceed that threshold — or otherwise potentially face being wound-up or being deprived of the right to exercise banking activities — do constitute a restriction on both the freedom of establishment and the free movement of capital. [41] Such provisions are liable to diminish the interest of investors in Italy, in other Member States and indeed in third States from acquiring a stake in the capital of a people's bank. [42]

40 See judgment of 21 June 2018, *Fidelity Funds and Others* (C-480/16, EU:C:2018:480, paragraph 33).

41 It is settled case-law that although the Treaty does not define the terms movements of capital and payments, Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5), together with the nomenclature annexed to it, may be used for the purposes of defining what constitutes a capital movement. Points I and III in the nomenclature set out in Annex I to Directive 88/361, and the explanatory notes appearing in that annex, indicate that direct investment in the form of participation in an undertaking by means of a shareholding or the acquisition of securities on the capital market constitute capital movements for the purposes of Article 56 EC. The explanatory notes state that direct investment is characterised, in particular, by the possibility of participating effectively in the management of a company or in its control. See, judgment of 13 May 2003, *Commission* v *Spain* (C-463/00, EU:C:2003:272, paragraphs 52 and 53 and the case-law cited).

42 This is particularly so considering the fact that investors may subsequently encounter difficulties in redeeming their capital investment in the light of the rules contained in Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014.

1. Justification

100. A restriction on freedom of establishment is permissible only if it is justified by overriding reasons in the public interest.[43] Moreover, the free movement of capital may be limited by national legislation only if it is justified by one of the reasons mentioned in Article 65 TFEU or by overriding reasons in the public interest as defined in the Court's case-law, to the extent that there are no harmonising measures at European Union level ensuring the protection of those interests.

101. In addition it will be recalled that the rights guaranteed by Articles 16 and 17(1) of the Charter are not absolute and that their exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union.

102. In this case, the referring court has indicated that the national provisions in question seek, on the one hand, to establish a proper balance between the legal form and dimensions of a people's bank and, on the other hand, to comply with EU prudential rules.[44] According to the referring court, they are thus aimed at making the regulation of national people's banks more consistent with the specific dynamics of the reference European market, guaranteeing greater competitiveness for those bodies and promoting greater transparency in their organisation, operation and functions.

103. In my view, the restrictions to the freedom of establishment and/or the free movement of capital and the rights guaranteed by Article 16 and 17(1) of the Charter which result from the Italian legislation of 2015 may, at least in principle, be justified on the grounds outlined by the Consiglio di Stato (Council of State).[45] As I have already indicated, the restrictions in question would appear to be aimed at ensuring the good governance and stability of the banking sector as a whole in Italy and, in particular, the cooperative banking sector in that Member State.[46] In that regard, the importance of the stability of the banking sector and, indeed, in certain specific cases, individual banks, was stressed by the Court in the judgment of 20 September 2016, *Ledra Advertising and Others* v *Commission and ECB* (C-8/15 P to C-10/15 P, EU:C:2016:701, paragraph 72).[47]

104. If, as the appellants claimed before the referring court, this maximum asset restriction has implications for the business of cooperative banks, this is really another way of saying that the Italian legislator has determined that this particular banking model poses a prudential risk to its banking system, such that these banks must be content with having a low capital base. For all the reasons I have already outlined, this is a judgment which, in principle, at least, the Italian legislator was entitled to take. Moreover, the public interest in ensuring that the capital of a bank is not abruptly withdrawn, thereby exposing it — and, indeed, the wider Italian banking sector — to prudential instability is, in my view, evident.[48]

105. It is, however, further necessary that the restrictions in question, be they to the freedom of establishment or the free movement of capital, or to the rights recognised and protected by Articles 16 and 17(1) of the Charter, should be appropriate for ensuring the attainment of the objective in question and not go beyond what is necessary to attain that objective.[49]

43 See judgment of 25 October 2017, *Polbud — Wykonawstwo* (C-106/16, EU:C:2017:804, paragraph 52).

44 This latter issue relates, in my view, to the question of redemption of shares rather than to the EUR 8 billion threshold. Ultimately, however, I consider that these issues are intimately linked as they form part of the same national legislative package.

45 See points 9 and 103 of this Opinion.

46 See for example points 2 and 3 of this Opinion.

47 See also judgment of 19 July 2016, *Kotnik and Others* (C-526/14, EU:C:2016:570, paragraph 50).

48 See point 82 of this Opinion.

49 See, to that effect, judgment of 25 October 2017, *Polbud — Wykonawstwo* (C-106/16, EU:C:2017:804, paragraphs 52 and 59). In paragraph 60 of the judgment of 21 May 2019, *Commission* v *Hungary (Usufruct over agricultural land)* (C-235/17, EU:C:2019:432), the Court stated that a measure which restricts that free movement of capital may be justified, inter alia, by the reasons referred to in Article 65 TFEU provided that it complies with the principle of proportionality.

106. It is ultimately for the national court, which has sole jurisdiction to assess the facts and interpret the national legislation, to determine whether those requirements of necessity and proportionality are met in the case in point.

107. It is clear that the Court, which is called on to provide answers of use to the national court in the context of a reference for a preliminary ruling, may provide guidance, on the basis of the file before it, in order to enable the referring court to give judgment. Nevertheless, given the lack of information in the file before the court on this matter, which is reflected by the very limited observations provided by the parties on this point — undoubtedly because they largely felt that the question was inadmissible or the Court lacked competence — I find myself unable to provide any real guidance on the matter. I would note, in that regard, that the Commission merely states that the threshold of EUR 8 billion would appear justified by the pursuit of good governance and the proper functioning of banking activity, which in turn contribute to banking and financial stability. The Commission considers that the asset threshold of EUR 8 billion is not unreasonable for the purpose of establishing a necessary distinction between small banks, within which the cooperative model is a reality, and banks which are medium or large in size and for which the legal regime applicable to people's banks is inadequate.

108. I consider, therefore, that Articles 49 and 63 et seq. TFEU, as well as Articles 16 and 17(1) of the Charter do not in principle preclude national provisions which limit the exercise of cooperative banking activities within a given asset limit, requiring the bank concerned to be converted into a company limited by shares if it should exceed that limit, where the provisions were adopted in order to ensure the good governance and stability of the banking sector or a particular section of the banking sector in a Member State and the restriction imposed by the provision is both necessary to achieve those objectives and is proportionate in nature. The assessment of the necessity and proportionality of this measure is, however, ultimately a matter for the referring court.

D. Third question

109. By its third question, the referring court asks the Court, in essence, whether the rules on State aid in Articles 107 et seq. TFEU preclude national provisions which require a people's bank to be converted into a company limited by shares if it exceeds a certain asset threshold and establishes restrictions on the redemption of the shares held by shareholders in the event of withdrawal, to avoid the possible liquidation of the converted bank.

110. The referring court notes that the appellants before it seek to assert that the national provisions which require the transformation of a people's bank into a company limited by shares in the event of exceeding a certain asset threshold and placing limitations on the redemption of shares in order to avoid the liquidation of the converted bank may be contrary to the EU rules on State aid.

111. The Banca d'Italia, Amber Capital, the Italian Government and the Commission consider that the measure in question does not constitute State aid. OC and Others consider that the possibility available to a people's bank which has been converted into a company limited by shares to postpone indefinitely (regardless of the amount in question) the redemption of the shares held by a shareholder in the event of withdrawal provides an undue advantage to the converted bank, as it may use the funds in question in its business.

112. According to settled case-law, classification of a measure as 'State aid', within the meaning of Article 107(1) TFEU, requires that *all* of the following conditions be fulfilled. First, there must be an intervention by the State or through State resources. Second, that intervention must be liable to affect trade between Member States. Third, it must confer a selective advantage on the recipient. Fourth, it must distort or threaten to distort competition. [50]

50 See judgment of 29 July 2019, *Azienda Napoletana Mobilità* (C-659/17, EU:C:2019:633, paragraph 20 and the case-law cited).

113. The referring court itself expresses doubt as to whether a case of State aid can be made given that the resources in question are not public but private in nature, as they originate from the shareholders of the bank. Moreover, that court considers that the measure in question does not appear to meet the requirement for selectiveness, because any people's bank affected by the reform is subject to the rules on redemption limits.

114. First, as regards the condition in relation to State intervention, the Court has stated in paragraphs 20 to 25 of the judgment of 13 September 2017, *ENEA* (C-329/15, EU:C:2017:671) that for it to be possible to classify advantages as 'State aid' within the meaning of Article 107(1) TFEU, they must be granted directly or indirectly through State resources and be attributable to the State. Thus, in order to assess whether a measure is attributable to the State, it is necessary to examine whether the public authorities were involved in the adoption of that measure. In addition, the condition that there must be intervention by the State or through State resources is satisfied not only where aid is granted directly by the State but also where it is granted by public or private bodies established or designated by the State with a view to administering the aid. A measure may thus fall within the definition of 'aid' even though it does not involve a transfer of State resources. Therefore, Article 107(1) TFEU covers all the financial means by which public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Even if the sums corresponding to the aid measure are not permanently held by the Treasury, the fact that they constantly remain under public control and, therefore, available to the competent national authorities, is sufficient for them to be categorised as 'State resources'. The Court also stated, however, in paragraph 26 of the judgment of 13 September 2017, *ENEA* (C-329/15, EU:C:2017:671), inter alia, that such circumstances must be distinguished from those in which private undertakings are not appointed by the State to manage a State resource, but are merely bound by an obligation to purchase using their own financial resources.

115. Thus in paragraph 34 of the judgment of 14 January 2015, *Eventech* (C-518/13, EU:C:2015:9) the Court stated that for the purposes of determining the existence of State aid, it is necessary to establish a sufficiently direct link between, on the one hand, the advantage given to the beneficiary and, on the other, a reduction of the State budget or a sufficiently concrete economic risk of burdens on that budget.

116. The four conditions required by Article 107(1) TFEU in order for a measure to constitute State aid are cumulative. The fact that the referring court itself stated that the resources in question are *not public but rather private in nature*, as they originate from the shareholders of the banks in question is itself of crucial importance, since, quite obviously, there can be no question of State aid where the resources in question are private in nature. In these circumstances, I consider, on the basis of the very limited information furnished by the referring court that Articles 107 et seq. TFEU do not preclude national provisions which require a people's bank to be converted into a company limited by shares if it exceeds a certain asset threshold and establishes restrictions on the redemption of the shares held by the shareholder in the event of withdrawal, to avoid the possible liquidation of the converted bank in circumstances where no public funds are at issue.

117. Second, due to the limited information in the request for a preliminary ruling, I am unable to assess whether the measures in question are selective or not. It would appear that the referring court assumes that only the situation of people's banks *inter se* must be assessed in respect of the question of selectivity. Why this is the case is not elaborated on in the request for a preliminary ruling. I am, however, unsure whether other banks or institutions are in a situation comparable to that of people's banks. In paragraph 54 of its judgment of 21 December 2016, *Commission* v *World Duty Free Group and Others* (C-20/15 P and C-21/15 P, EU:C:2016:981), the Court stated that the assessment relating to the selectivity of the advantage requires a determination whether, under a particular legal regime, a

national measure is such as to favour 'certain undertakings or the production of certain goods' over other undertakings which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation and which accordingly suffer different treatment that can, in essence, be classified as discriminatory.

118. I therefore consider that Articles 107 et seq. TFEU on State aid do not preclude a national provision which requires a people's bank to be converted into a company limited by shares if it exceeds a certain asset threshold and establishes restrictions on the redemption of the shares held by shareholders in the event of withdrawal, in order to avoid the possible liquidation of the converted bank, where the resources in question originate from the shareholders of the bank in question, and are thus private rather than public in nature.

E. Fifth question

119. By its fifth question, the Consiglio di Stato (Council of State) asks the Court, in essence, to assess whether Article 10 of Delegated Regulation No 241/2014 is compatible with Articles 16 and 17 of the Charter.

120. I consider that this question is inadmissible, as it fails to comply with the requirements of Article 94(c) of the Rules of Procedure of the Court. The referring court, aside from very briefly reciting the arguments of the appellants on this question, in no manner whatsoever provided a statement of reasons as to what prompted it to inquire about the validity of Article 10 of Delegated Regulation No 241/2014.

121. In that regard, the referring court merely indicated in its request for a preliminary ruling that according to the appellants, aside from the question as to whether the 9th update to Circular No 285 is compatible with Article 10 of Delegated Regulation No 241/2014, the legality of that regulation itself must be examined, as its application may entail a substantial exclusion of the possibility of obtaining a reimbursement of shares without any corresponding right to immediate compensation.

122. Moreover, given that the referring court has not correctly challenged the validity of Article 10 of Delegated Regulation No 241/2014, that provision must be presumed valid and compatible with Articles 16 and 17 of the Charter.[51] In that regard, I consider that, in the absence of any evidence or indeed argument to the contrary by the referring court, the limitations on the rights recognised and protected by Articles 16 and 17 of the Charter imposed by the prudential rules and standards laid down in Article 10 of Delegated Regulation No 241/2014 are presumed to be in the public interest and to comply with the principle of proportionality.

VI. Conclusion

123. Accordingly, in view of all the foregoing, if the Court considers that the questions referred are admissible, it is my view that the Court should answer the questions referred by the Consiglio di Stato (Council of State, Italy) as follows:

(1) Article 29 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 10 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation (EU) No 575/2013 of the European

51 In paragraph 39 of the judgment of 14 June 2012, *CIVAD* (C-533/10, EU:C:2012:347), the Court stated that 'the acts of the European Union institutions, bodies, offices and agencies are presumed to be lawful, which implies that they produce legal effects until such time as they are withdrawn, annulled in an action for annulment or declared invalid following a reference for a preliminary ruling or a plea of illegality'.

Parliament and of the Council with regard to regulatory technical standards for Own Funds requirements for institutions, and Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions neither require nor preclude a national provision which imposes an asset threshold of EUR 8 billion above which a people's bank must be converted into a company limited by shares.

(2) Article 29 of Regulation No 575/2013 and Article 10(2) of Delegated Regulation No 241/2014 do not preclude a national provision which permits a people's bank to defer redemption for an unlimited period and to limit the associated amount in full or in part until such time and to the extent that the prudential requirements of Article 10(3) of Delegated Regulation No 241/2014 are met.

(3) Articles 49 and 63 et seq. TFEU and Articles 16 and 17(1) of the Charter do not preclude national provisions which limit the exercise of cooperative banking activities within a given asset limit, requiring the bank concerned to be converted into a company limited by shares if it should exceed that limit where the provisions were adopted in order to ensure the good governance and stability of the banking sector or a particular section of the banking sector in a Member State and the restriction imposed by the provision is both necessary to achieve those objectives and is proportionate in nature.

(4) Articles 107 et seq. TFEU on State aid do not preclude a national provision which requires a people's bank to be converted into a company limited by shares if it exceeds a certain asset threshold and establishes restrictions on the redemption of the shares held by shareholders in the event of withdrawal, in order to avoid the possible liquidation of the converted bank, where the resources in question originate from the shareholders of the bank in question are thus private rather than public in nature.