Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

16 July 2020*

(Reference for a preliminary ruling — Admissibility — Article 63 et seq. TFEU — Free movement of capital — Article 107 et seq. TFEU — State aid — Articles 16 and 17 of the Charter of Fundamental Rights of the European Union — Freedom to conduct a business — Right to property — Regulation (EU) No 575/2013 — Prudential requirements applicable to credit institutions and investment firms — Article 29 — Regulation (EU) No 1024/2013 — Article 6(4) — Prudential supervision of credit institutions — Conferral of specific tasks on the European Central Bank (ECB) — Delegated Regulation (EU) No 241/2014 — Regulatory technical standards for Own Funds requirements for institutions — National regulation imposing an asset threshold on people's banks established as cooperative societies and allowing the right to redeem shares by the withdrawing shareholder to be limited)

In Case C-686/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 18 October 2018, received at the Court on 5 November 2018, in the proceedings

OC and Others,

Associazione Difesa Utenti Servizi Bancari Finanziari Postali Assicurativi — Adusbef,

Federazione Nazionale di Consumatori ed Utenti — Federconsumatori,

PB and Others,

QA and Others

v

Banca d'Italia

Presidenza del Consiglio dei Ministri,

Ministero dell'Economia e delle Finanze,

intervening parties:

Banca Popolare di Sondrio ScpA,

Veneto Banca ScpA,

Banco Popolare — Società Cooperativa,

* Language of the case: Italian.

Coordinamento delle associazioni per la tutela dell'ambiente e dei diritti degli utenti e consumatori (Codacons),

Banco BPM SpA,

Unione di Banche Italiane — Ubi Banca SpA,

Banca Popolare di Milano,

Amber Capital Italia SGR SpA,

RZ and Others,

Amber Capital UK LLP,

Unione di Banche Italiane — Ubi Banca ScpA,

Banca Popolare di Vicenza ScpA,

Banca Popolare dell'Etruria e del Lazio SC,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, M. Safjan, L. Bay Larsen and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– OC and Others, by F. Capelli, F.S. Marini and U. Corea, avvocati,

– Banca d'Italia, by D. La Licata, M. Perassi and R. D'Ambrosio, avvocati,

– Banca Popolare di Sondrio ScpA, by G. Tanzarella, M.A. Sandulli, P. Mondini and C. Tanzarella, avvocati,

– Unione di Banche Italiane — Ubi Banca SpA, by G. Lombardi and G. de Vergottini, avvocati,

– Amber Capital Italia SGR SpA and Amber Capital UK LLP, by G. Sciacca and P. Cardellicchio, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and P. Gentili and G.M. De Socio, avvocati dello Stato,

– the European Commission, by V. Di Bucci, H. Krämer and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 February 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3, Article 63 et seq. and Article 107 et seq. TFEU, Article 16 and Article 17 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 (OJ 2013 L 176, p. 1), 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 (OJ 2013 L 287, p. 63), and Article 10 of Commission Delegated Regulation (EU) No 241/2014 of 7 January 2014 supplementing Regulation No 575/2013 with regard to regulatory technical standards for Own Funds requirements for institutions (OJ 2014 L 74, p. 8).

2 The request has been made in the context of three sets of proceedings between (i) OC and Others, on the one hand, and the Banca d'Italia (Bank of Italy) and the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy), on the other, (ii) the Associazione Difesa Utenti Servizi Bancari Finanziari Postali Assicurativi — Adusbef, the Federazione Nazionale di Consumatori ed Utenti — Federconsumatori and PB and Others, on the one hand, and the Bank of Italy, the Presidency of the Council of Ministers and the Ministero dell'Economia e delle Finanze (Ministry of Economy and Finance, Italy), on the other, and (iii) QA and Others, on the one hand, and the Bank of Italy, on the other, concerning acts adopted by the Bank of Italy as part of its task of prudential supervision of Italian people's banks.

Legal context

European Union law

Regulation No 575/2013

3 According to recital 7 of Regulation No 575/2013:

'This Regulation should, inter alia, contain the prudential requirements for institutions that relate strictly 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. …'

4 As stated in the first paragraph of Article 1 of Regulation No 575/2013, 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 (OJ 2013 L 176, p. 338), must comply with in relation to own funds requirements, requirements limiting large exposures, liquidity requirements, reporting requirements, leverage and public disclosure requirements.

5 Under point (a) of the first subparagraph of Article 26(1) of that regulation, capital instruments are Common Equity Tier 1 items of institutions, provided that the conditions laid down in Article 28 or, where applicable, Article 29 of that regulation are met.

6 Article 28 of Regulation No 575/2013, headed ‘Common Equity Tier 1 instruments’, provides, in paragraph 1 thereof:

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

…

(e) the instruments are perpetual;

…’

7 Article 29 of that regulation, headed ‘Capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions’, states:

‘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.

…

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)].’

8 Article 30 of that regulation, headed ‘Consequences of the conditions for Common Equity Tier 1 instruments ceasing to be met’, is worded as follows:

‘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.'

Regulation No 1024/2013

9 According to the first paragraph of Article 1 thereof, Regulation No 1024/2013 confers on the European Central Bank (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 European 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.

10 Under Article 6(1) of Regulation No 1024/2013, the ECB is to carry out its tasks within a single supervisory mechanism (SSM) composed of the ECB and national competent authorities, and is to be responsible for the effective and consistent functioning of the SSM.

11 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 [gross domestic product (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.

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 [European Financial Stability Facility (EFSF)] or the [European Stability Mechanism (ESM)] 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.'

Delegated Regulation No 241/2014

12 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. …'

13 Article 1 of that regulation provides:

'This Regulation lays down rules concerning:

…

(d) the nature of limitations on redemption necessary where the refusal by the institution of the redemption of own funds instruments is prohibited under applicable national law, according to Article 29(6) of Regulation [No 575/2013];

…'

14 Article 10 of that regulation, headed '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 … No 575/2013 and Article 78(3) of Regulation … No 575/2013', is worded 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 [Article] 78(3) of Regulation … 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 … No 575/2013, the specific own funds requirements referred to in Article 104(1)(a) of Directive [2013/36] and the combined buffer requirement as defined in point (6) of Article 128 of that Directive.'

Italian law

15 Article 28(2-ter) of decreto legislativo n. 385 — Testo unico delle leggi in materia bancaria e creditizia (Legislative Decree No 385 — the consolidated law on banking and credit) of 1 September 1993 (Ordinary Supplement to GURI No 230 of 30 September 1993), in the version applicable to the dispute in the main proceedings ('Legislative Decree No 385/1993'), provides:

'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 Bank of Italy, 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 Bank of Italy may limit the right of redemption of other capital instruments issued.'

16 Article 29 of Legislative Decree No 385/1993 provides as follows:

'1. People's banks are established as limited liability cooperative societies.

2. The nominal value of the shares may not be less than EUR 2.

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 shall be 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 Bank of Italy, taking into account the circumstances and the amount by which the threshold has been exceeded, may impose a ban on the undertaking of new operations …, or the measures laid down in Title IV, Chapter I, Section I, or may propose that the [ECB] revoke the authorisation to undertake banking activities and that the Minister for the Economy and Finance initiate compulsory administrative liquidation. This is without prejudice to the powers of intervention and sanction of the Bank of Italy under the present legislative decree.

2-quater. The Bank of Italy shall adopt measures for the implementation of this article.

…'

17 Article 1(2) of decreto-legge n. 3, recante 'Misure urgenti per il sistema bancario e gli investimenti' (Decree Law No 3 on 'Urgent measures for the banking system and investments') of 24 January 2015 (GURI No 19 of 24 January 2015), converted into law, with amendments, by legge n. 33 (Law No 33) of 24 March 2015 (GURI No 70 of 25 March 2015), in the version applicable to the dispute in the main proceedings ('Decree-Law No 3/2015'), 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 adjustment to comply with the provisions laid down in Article 29(2-bis) and (2-ter) of [Legislative Decree No 385/1993], introduced by this article, within 18 months of the date of entry into force of the implementing provisions imposed by the Bank of Italy in accordance with Article 29.'

18 Decreto-legge n. 91 (Decree-Law No 91) of 25 July 2018 (GURI No 171 of 25 July 2018), converted into law by legge n. 108 (Law No 108) of 21 September 2018 (GURI No 220 of 21 September 2018), extended the 18-month deadline laid down in Article 1(2) of Decree-Law No 3/2015 to 31 December 2018.

19 By its ninth update, of 9 June 2015, to its Circular No 285 of 17 December 2013, entitled 'Supervisory provisions for banks' ('the 9th update to Circular No 285'), the Bank of Italy implemented Articles 28 and 29 of Legislative Decree No 385/1993.

20 In particular, on the basis of Article 28(2-ter) of Legislative Decree No 385/1993, the 9th update to Circular No 285 provides that the articles of association of a people's bank and a cooperative credit bank are to attribute to the body responsible for strategic supervision, on the basis of a proposal from the body responsible for management and 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 and other capital instruments held by a shareholder in the case of his or her withdrawal (including following the bank's conversion), death or exclusion.

21 The order for reference indicates that all but two Italian people's banks have complied with the provisions of Italian law set out above.

The disputes in the main proceedings and the questions referred for a preliminary ruling

22 By three separate applications, the appellants in the main proceedings brought actions against acts adopted by the Bank of Italy, in particular the 9th update to Circular No 285, before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), which dismissed those actions by judgments No 6548/2016, No 6544/2016 and No 6540/2016.

23 The appellants in the main proceedings brought appeals against those judgments before the referring court, the Consiglio di Stato (Council of State, Italy), which adopted orders suspending the effects of the 9th update to Circular No 285 and raised questions concerning the constitutionality of Decree-Law No 3/2015.

24 By judgment No 99/2018, the Corte costituzionale (Constitutional Court, Italy) declared those questions unfounded.

25 Following the resumption of the proceedings before the referring court, the latter, by order No 3645/2018, extended the suspensions previously ordered until the date of publication of the judgment disposing of the substance of the dispute, with the exception of that regarding the 18-month deadline laid down in Article 1(2) of Decree-Law No 3/2015 which had already been the subject of a statutory extension until 31 December 2018.

26 It was in those circumstances that the Consiglio di Stato (Council of State) decided to stay proceedings and to refer the following questions to the Court 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 … 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? 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 … 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 Article 107 et seq. TFEU on State aid preclude a national provision such as that introduced by Article 1 of Decree-Law No 3/2015 …, 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 …, 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 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 for the Protection of Human Rights and Fundamental Freedoms signed at Paris on 20 March 1952]?'

Procedure before the Court

27 The referring court requested that the present case be dealt with in accordance with the expedited procedure pursuant to Article 105(1) of the Court's Rules of Procedure.

28 That request was rejected by order of the President of the Court of Justice of 18 January 2019, *Adusbef and Others* (C-686/18, not published, EU:C:2019:68).

Consideration of the questions referred

Admissibility

29 Unione di Banche Italiane — Ubi Banca SpA takes the view that, as the present request for a preliminary ruling was made after the Corte costituzionale (Constitutional Court) ruled that the legislation at issue in the main proceedings is consistent with the Italian Constitution, there is a risk of incompatibility between the national proceedings before the Corte costituzionale (Constitutional Court) and the present request, with the result that the present request is inadmissible in its entirety.

30 In that regard, it must be borne in mind that the functioning of the system of cooperation between the Court of Justice and the national courts established by Article 267 TFEU requires, as does the principle of primacy of EU law, the national court to be free to refer to the Court for a preliminary ruling any question that it considers necessary, at whatever stage of the proceedings it considers appropriate, even at the end of an interlocutory procedure for the review of constitutionality (judgments of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 52, and of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 22).

31 The effectiveness of EU law would be impaired and the effectiveness of Article 267 TFEU diminished if, as a result of the existence of a procedure for review of constitutionality, the national court were precluded from referring questions to the Court for a preliminary ruling and immediately applying EU law in a manner consistent with the Court's decision or case-law (judgment of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 23).

32 As a supreme court, the Consiglio di Stato (Council of State) is indeed obliged, in accordance with the third paragraph of Article 267 TFEU, to submit a request for a preliminary ruling to the Court of Justice when it finds that the substance of the dispute involves a question which comes within the scope of the first paragraph of Article 267 TFEU, even if, in the same dispute, it may ask the constitutional court of the Member State concerned about the constitutionality of the national rules (see, by analogy, judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 72).

33 As a result, the fact that the Corte costituzionale (Constitutional Court) has given a ruling on the compatibility of the national legislation at issue in the main proceedings with the provisions of the Italian Constitution has no bearing on the obligation to refer questions concerning the interpretation or validity of EU law to the Court of Justice (see, to that effect, judgment of 20 December 2017, *Global Starnet*, C-322/16, EU:C:2017:985, paragraph 25).

34 It follows that the request for a preliminary ruling cannot be declared inadmissible on the basis of that fact.

35 In addition, the Bank of Italy, the Unione di Banche Italiane — Ubi Banca, the Banca Popolare di Milano, Amber Capital Italia SGR SpA, Amber Capital UK LLP, the Italian Government and the European Commission claim that the questions referred for a preliminary ruling are, in whole or in part, inadmissible, on the ground that the referring court has provided insufficient information and the questions are irrelevant for the purposes of resolving the dispute in the main proceedings.

36 As regards the information that any request for a preliminary ruling must contain, it should be borne in mind that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts established by Article 267 TFEU, the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for that court to set out the factual and legislative context of the questions referred or, at the very least, to explain the factual circumstances on which those questions are based. The Court is empowered to rule on the

interpretation or validity of EU provisions only on the basis of the facts which the national court puts before it (orders of 5 October 2017, *OJ*, C-321/17, not published, EU:C:2017:741, paragraph 12, and of 5 June 2019, *Wilo Salmson France*, C-10/19, not published, EU:C:2019:464, paragraph 12).

37 The Court also stresses that it is important for the referring court to set out the precise reasons why it was unsure as to the correct interpretation of EU law and why it considered 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, in the order for reference itself, at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (orders of 12 May 2016, *Security Service and Others*, C-692/15 to C-694/15, EU:C:2016:344, paragraph 20, and of 5 June 2019, *Wilo Salmson France*, C-10/19, not published, EU:C:2019:464, paragraph 13).

38 Those requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure, of which the referring court is expected, in the context of the cooperation instituted by Article 267 TFEU, to be aware and which it is bound to observe scrupulously (orders of 12 May 2016, *Security Service and Others*, C-692/15 to C-694/15, EU:C:2016:344, paragraph 18; of 5 June 2019, *Wilo Salmson France*, C-10/19, not published, EU:C:2019:464, paragraph 14; and of 7 November 2019, *P.J.*, C-513/19, not published, EU:C:2019:953, paragraph 15). They are also set out in paragraph 15 of the recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1).

39 Lastly, in accordance with settled case-law, a request for a preliminary ruling from a national court must be rejected where it is quite obvious that the interpretation of Union law sought bears no relation to the facts or purpose of the main proceedings (judgment of 10 July 2014, *Apple*, C-421/13, EU:C:2014:2070, paragraph 30, and order of 17 January 2019, *Cipollone*, C-600/17, not published, EU:C:2019:29, paragraph 21).

40 It is in the light of all the requirements set out above that the admissibility of the present request for a preliminary ruling must be assessed.

Admissibility of the first part of the first question

41 By the first part of the first question, the referring court asks, in essence, whether Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014 and Articles 16 and 17 of the Charter, in conjunction with Article 6(4) of Regulation No 1024/2013, must be interpreted as precluding national legislation that sets an asset threshold of EUR 8 billion above which a people's bank established as a limited liability cooperative society must be converted into a company limited by shares.

42 Article 6 of Regulation No 1024/2013 lays down detailed provisions governing the exercise, within the SSM, which is composed of the ECB and national competent authorities, of the tasks which that regulation confers on the ECB relating to the prudential supervision of credit institutions.

43 In that respect, Article 6(4) of that regulation provides, in essence, the criteria for determining the cases in which those tasks are to be carried out by the ECB alone and those cases in which the national competent authorities are to assist the ECB in carrying out those tasks, by a decentralised implementation of some of those tasks in relation to less significant credit institutions, within the meaning of the first subparagraph of Article 6(4) of that regulation (see, to that effect, judgment of 8 May 2019, *Landeskreditbank Baden-Württemberg* v *ECB*, C-450/17 P, EU:C:2019:372, paragraph 41).

44 Article 6(4) of Regulation No 1024/2013 does not set an asset threshold above which a people's bank must be converted into a company limited by shares, reduce its assets or be liquidated. That provision neither requires nor prohibits the setting of such a threshold.

45 The asset threshold of EUR 30 billion established in point (i) of the second subparagraph of Article 6(4) of that regulation is one of the conditions set out in that provision to identify credit institutions which are not to be considered less significant credit institutions for the purposes of the application of Article 6(4).

46 As a result, Article 6(4) of Regulation No 1024/2013 is unrelated to the asset threshold of EUR 8 billion set by the national legislation at issue in the main proceedings.

47 Equally, Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 are unrelated to that threshold.

48 These provisions, which lay down, in connection with the rules on prudential requirements laid down by those regulations concerning own funds, the conditions which must be satisfied in order for capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions to qualify as Common Equity Tier 1 instruments, do not establish an asset threshold above which those institutions and undertakings must be converted into companies limited by shares, reduce their assets or be liquidated. They neither require the Member States to establish such a threshold nor prevent them from doing so.

49 In those circumstances, since Article 6(4) of Regulation No 1024/2013, Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 are unrelated to the asset threshold established by the legislation at issue in the main proceedings, an interpretation of those provisions is clearly irrelevant.

50 Furthermore, the referring court neither explains why, in its view, such an interpretation is relevant for the purposes of resolving the dispute before it nor explains the connection that it makes between those provisions and the national legislation at issue.

51 As regards the request for interpretation of Articles 16 and 17 of the Charter, it should be recalled that, under Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law.

52 In accordance with settled case-law, the concept of 'implementing Union law', as referred to in Article 51 of the Charter, assumes a degree of connection between an EU legal measure and the national measure in question, above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other (judgments of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraph 24; of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 34; and of 6 October 2016, *Paoletti and Others*, C-218/15, EU:C:2016:748, paragraph 14).

53 In that respect, the Court has found that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the subject area concerned did not impose any specific obligation on Member States with regard to the situation at issue in the main proceedings (judgments of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraph 26, and of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 35).

54 As is clear from the foregoing, none of the provisions of EU law referred to by the referring court in the first part of its first question require the Member States to set an asset threshold, such as the one at issue in the main proceedings, above which people's banks established as limited liability cooperative societies must be converted into companies limited by shares, reduce their assets or be liquidated.

55 In the light of all the foregoing, the first part of the first question is inadmissible in its entirety.

Admissibility of the second question

56 The second question relates to the compatibility with Article 3 and Article 63 et seq. TFEU of national legislation that sets an asset threshold on the exercise of banking activities by people's banks above which those banks, established as cooperatives limited by shares, must be converted into companies limited by shares, reduce their assets to below that threshold or be liquidated.

57 This question is inadmissible in so far as it concerns the interpretation of Article 3 TFEU, since the referring court merely seeks an interpretation of that provision 'on competition in the internal market' and the request for a preliminary ruling neither explains why it is unsure as to the correct interpretation of that provision nor states the connection that it makes between that provision and the dispute in the main proceedings.

Admissibility of the third question

58 By its third question, the referring court asks, in essence, whether Article 107 et seq. TFEU must be interpreted as precluding national legislation which, first, sets an asset threshold above which a people's bank established as a limited liability cooperative society must be converted into a company limited by shares, reduce its assets to below that threshold or be liquidated and, second, allows the institution concerned to limit the redemption of the shares held by the withdrawing shareholder in order to avoid possible liquidation.

59 However, the referring court does not state with the necessary precision and clarity either the reasons that prompted it to inquire about the interpretation those provisions of EU law or the connection that it makes between those provisions and the national legislation at issue in the main proceedings.

60 The referring court does not explain why it might reach the conclusion that national legislation such as that at issue in the main proceedings provides an advantage, that it establishes a selective measure, that the aid stems from State resources or that it distorts or threatens to distort competition. The referring court therefore does not provide the Court with the information to enable it to assess whether such a measure may be classified as 'State aid' within the meaning of Article 107(1) TFEU.

61 In those circumstances, as regards the third question, the request for a preliminary ruling does not comply with the requirements set out in Article 94 of the Rules of Procedure and does not allow the Court to provide the referring court with a useful answer to that question, which must, therefore, be declared inadmissible.

Admissibility of the fifth question

62 By its fifth question, the referring court asks the Court to rule on the validity of Article 10 of Delegated Regulation No 241/2014.

63 In that regard, it is important that the referring court state, in particular, the precise reasons which led it to question the validity of certain EU law provisions and set out the grounds of invalidity which, consequently, appear to it capable of being upheld (judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 48 and the case-law cited).

64 It follows from the foregoing, first, that in a reference for a preliminary ruling, the Court will examine the validity of an EU act or certain provisions thereof in the light of the grounds of invalidity set out in the order for reference. Second, if there is no mention of the precise reasons which led the referring

court to question the validity of that act or of those provisions, the questions relating to the validity thereof will be inadmissible (judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 50).

65 In the present case, it is clear that the referring court has not stated the reasons which led it to question the validity of Article 10 of Delegated Regulation No 241/2014.

66 Accordingly, the fifth question is inadmissible.

Substance

Second part of the first question and the fourth question

67 The second part of the first question and the fourth question concern the compatibility with certain provisions of EU law of national legislation that allows people's banks to limit the redemption of their capital instruments.

68 In that regard, it must be noted from the outset that the subject matter of Article 6(4) of Regulation No 1024/2013, as noted in paragraphs 42 and 43 above, is unconnected with the ability to limit the redemption of capital instruments and, as a result, the interpretation of this provision is irrelevant in that regard. These questions must therefore be reformulated in such a way as to exclude that provision.

69 Accordingly, by the second part of its first question and by its fourth question, which it is appropriate to examine together, the referring court asks, in essence, whether Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014 and Articles 16 and 17 of the Charter must be interpreted as precluding legislation of a Member State that allows a people's bank established in that Member State to defer, for an unlimited period, the redemption of the shares held by the withdrawing shareholder and to limit the amount to be redeemed.

– Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014

70 It is apparent from recital 7 of Regulation No 575/2013 that the EU legislature intended that regulation to contain, inter alia, the prudential requirements for institutions that relate strictly 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 for investors and depositors.

71 In accordance with point (a) of the first paragraph of Article 1 of that regulation, the regulation lays down uniform rules concerning general prudential requirements that institutions supervised under Directive 2013/36 must comply with in relation to own funds requirements.

72 It is against that background that Article 28 of the regulation sets out the conditions that must be satisfied in order for capital instruments to qualify as Common Equity Tier 1 instruments and Article 29 of the regulation lays down the specific conditions that must be satisfied for that purpose as regards capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions.

73 In particular, according to Article 29(2)(a) of Regulation No 575/2013, an institution is to be able to refuse the redemption of those instruments unless such a refusal is prohibited under national law. In the latter case, Article 29(2)(b) provides that the provisions governing those instruments are to give the institution the ability to limit their redemption.

74 Rules specifying the way in which that ability to limit redemption of capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions may be exercised were adopted by the Commission on the basis of Article 29(6) of that regulation. Those rules are set out in Article 10 of Delegated Regulation No 241/2014.

75 Pursuant to the first sentence of Article 10(2) of that delegated regulation, that ability encompasses the right to defer the redemption and the right to limit the amount to be redeemed.

76 The second sentence of that provision states that those rights may be exercised for an unlimited period of time under Article 10(3) of the delegated regulation, which provides that the extent of the limitations on redemption included in the provisions governing capital instruments is to be determined by the institution concerned on the basis of the prudential situation of the institution at any time, having regard to in particular, but not limited to, the overall financial, liquidity and solvency situation of the institution and 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 specific requirements referred to in Article 10(3)(b) of that delegated regulation.

77 It therefore follows from Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 that (i) capital instruments issued by mutuals, cooperative societies, savings institutions and similar institutions may qualify as Common Equity Tier 1 instruments, where national law prohibits such institutions from refusing the redemption of capital instruments, on condition that the institutions in question have the ability to limit that redemption, which encompasses the right to defer the redemption and the right to limit the amount to be redeemed, and (ii) the extent of the limitations on redemption is to be determined by the institution concerned on the basis of the prudential situation of the institution at any time.

78 In the present case, it is apparent from the order for reference that the provisions of Italian law at issue in the main proceedings prohibit Italian people's banks from refusing the redemption of capital instruments. However, they allow them to limit the redemption of shares in the event of withdrawal by a shareholder where necessary in order to ensure that the capital instruments issued by those banks may be accounted for as Common Equity Tier 1 instruments. It is also apparent from the order for reference that, pursuant to these provisions, those banks may defer that redemption for an unlimited period and limit the amount to be redeemed in full or in part.

79 As is clear from the very wording of the second sentence of Article 10(2) of Delegated Regulation No 241/2014, where national law prohibits refusal of redemption of capital instruments, the option provided for in Article 29(2)(b) of Regulation No 575/2013 makes it possible to defer redemption and limit the amount to be redeemed for an unlimited period pursuant to Article 10(3) of that delegated regulation, namely for as long as, and to the extent that, it is necessary in the light of the prudential situation of the institution having regard, in particular, to the matters referred to in the latter provision.

80 Accordingly, Article 29 of Regulation No 575/2013 and Article 10 of Delegated Regulation No 241/2014 do not preclude legislation of a Member State which prohibits people's banks established in that Member State from refusing the redemption of capital instruments but which, where necessary in order to ensure that the capital instruments issued by those banks may qualify as Common Equity Tier 1 instruments, allows those banks to defer, for an unlimited period, the redemption of the shares held by the withdrawing shareholder and limit the amount to be redeemed in full or in part.

– *Articles 16 and 17 of the Charter*

81 Article 16 of the Charter recognises the freedom to conduct a business in accordance with Union law and national laws and practices.

82 The protection afforded by that article covers the freedom to exercise an economic or commercial activity, freedom of contract and free competition (judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 42; of 17 October 2013, *Schaible*, C-101/12, EU:C:2013:661, paragraph 25; and of 12 July 2018, *Spika and Others*, C-540/16, EU:C:2018:565, paragraph 34).

83 According to settled case-law, the freedom to conduct a business is not absolute. It may 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 (judgments of 22 January 2013, *Sky Österreich*, C-283/11, EU:C:2013:28, paragraphs 45 and 46; of 17 October 2013, *Schaible*, C-101/12, EU:C:2013:661, paragraph 28; and of 26 October 2017, *BB construct*, C-534/16, EU:C:2017:820, paragraph 36).

84 Under 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. The use of property may be regulated by law in so far as is necessary for the general interest.

85 In that regard, it should be borne in mind that the right to property guaranteed by that provision is not absolute and that its exercise may be subject to restrictions justified by objectives of general interest pursued by the European Union that do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference impairing the very substance of the right guaranteed (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, paragraphs 69 and 70).

86 Furthermore, it should also be borne in mind that, in accordance with Article 52(1) of the Charter, limitations may be imposed on the exercise of the rights and freedoms recognised by the Charter, such as the freedom to conduct a business and the right to property, as long as those limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others.

87 The ability, granted to people's banks by national legislation, to limit the redemption of their capital instruments, where necessary in order to ensure that the capital instruments that they issue may be accounted for as Common Equity Tier 1 instruments, is provided for by law within the meaning of Article 52(1) of the Charter.

88 The essence of the freedom to conduct a business, guaranteed by Article 16 of the Charter, and of the right to property under Article 17 thereof is respected by national legislation, such as that at issue in the main proceedings, providing for the ability to limit the redemption of shares in the event of withdrawal of a shareholder, which is intended to satisfy the condition set out in Article 29(2)(b) of Regulation No 575/2013 so that the shares qualify as Common Equity Tier 1 instruments.

89 First, that ability does not lead to a deprivation of property and therefore does not constitute interference that undermines the very substance of the right to property. Second, even if it were concluded that that ability limited the freedom to conduct a business, it respects the essence of that freedom since it does not prevent the exercise of banking activities. In that regard, the Court has recognised that cooperative societies conform to particular operating principles, which clearly distinguish them from other economic operators (see, to that effect, judgment of 8 September 2011, *Paint Graphos and Others*, C-78/08 to C-80/08, EU:C:2011:550, paragraph 55).

90 As regards the objectives pursued by the legislation at issue in the main proceedings, as well as being intended, by providing for that possibility, to implement that condition, the referring court states that the legislation seeks to ensure that the legal form is appropriate to the size of a people's bank as well as compliance with EU prudential rules governing banking activities. According to the referring court, that legislation is thus intended to make the legal form of people's banks more in line with the specific dynamics of the reference market, to guarantee greater competitiveness for those banks and to promote greater transparency in their organisation, operation and functions.

91 Such objectives, which are capable of ensuring good governance in the cooperative banking sector, the stability of that sector and prudent exercise of banking activities, help to prevent the default of the institutions concerned, or even a systemic risk, and, as a result, help to guarantee the stability of the banking and financial system.

92 In that regard, it should be borne in mind that, according to the Court's case-law, the objectives of ensuring the stability of the banking and financial system and preventing a systemic risk are objectives of public interest pursued by the European Union (see, to that effect, judgments of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraphs 69, 88 and 91; 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, paragraphs 71 and 74; and of 8 November 2016, *Dowling and Others*, C-41/15, EU:C:2016:836, paragraphs 51 and 54).

93 Indeed, financial services play a central role in the economy of the European Union. Banks and credit institutions are an essential source of funding for businesses that are active in the various markets. In addition, banks are often interconnected and a number of them operate internationally. That is why the failure of one or more banks is liable to spread rapidly to other banks, either in the Member State concerned or in other Member States. That is liable, in turn, to produce negative spill-over effects in other sectors of the economy (judgments of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 50, and 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).

94 In addition, as the Advocate General noted in points 81 and 104 of his Opinion, there is a clear public interest in ensuring that core equity investment in a bank is not unexpectedly withdrawn, and in thus preventing that bank and the whole of the banking sector from being exposed to instability, from a prudential perspective.

95 As a result, it must be held that restrictions on the exercise of the right to property and, if they exist, restrictions on the exercise of the freedom to conduct a business, resulting from legislation such as that at issue in the main proceedings genuinely meet objectives of general interest recognised by the European Union within the meaning of Article 52(1) of the Charter.

96 Furthermore, those restrictions will respect the principle of proportionality if they do not go beyond what is necessary, with regard to the prudential situation of the banks concerned, in order to ensure that the capital instruments they issue qualify as Common Equity Tier 1 instruments, which is a matter for the referring court to ascertain. In so doing, the referring court will have to have regard, in particular, to the matters referred to in Article 10(3) of Delegated Regulation No 241/2014.

97 In the light of all the foregoing considerations, the answer to the second part of the first question and to the fourth question is that Article 29 of Regulation No 575/2013, Article 10 of Delegated Regulation No 241/2014 and Articles 16 and 17 of the Charter must be interpreted as not precluding legislation of a Member State which prohibits people's banks established in that Member State from refusing the redemption of capital instruments but which allows those banks to defer, for an unlimited period, the redemption of the shares held by the withdrawing shareholder and to limit the amount to be redeemed in full or in part, provided that the limitations on redemption imposed when exercising that option do not go beyond what is necessary, in the light of the prudential situation of the banks concerned, in

order to ensure that the capital instruments they issue qualify as Common Equity Tier 1 instruments, having regard, in particular, to the matters referred to in Article 10(3) of Delegated Regulation No 241/2014, which is a matter for the referring court to ascertain.

The second question

98 By its second question, the referring court asks, in essence, whether Article 63 et seq. TFEU must be interpreted as precluding legislation of a Member State that sets an asset threshold on the exercise of banking activities by people's banks established in that Member State and established as limited liability cooperative societies above which those banks must be converted into companies limited by shares, reduce their assets to below that threshold or be liquidated.

99 Under Article 63(1) TFEU, all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited.

100 In that regard, it should be borne in mind that, according to settled case-law, in the absence, in the FEU Treaty, of a definition of the concept of 'movement of capital' within the meaning of Article 63(1) TFEU, the Court has previously recognised as having indicative value the nomenclature of capital movements set out in Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the [EC Treaty (repealed by the Treaty of Amsterdam)] (OJ 1988 L 178, p. 5) (judgments of 27 January 2009, *Persche*, C-318/07, EU:C:2009:33, paragraph 24; of 10 November 2011, *Commission* v *Portugal*, C-212/09, EU:C:2011:717, paragraph 47; and of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 40).

101 Accordingly, the Court has consistently held that movements of capital within the meaning of Article 63(1) TFEU include in particular 'direct' investments, namely investments in the form of participation in an undertaking through the holding of shares which confers the possibility of effectively participating in the management and control of that undertaking, and 'portfolio' investments, namely investments in the form of the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking (judgments of 11 November 2010, *Commission* v *Portugal*, C-543/08, EU:C:2010:669, paragraph 46; of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 40; and of 26 February 2019, *X (Controlled companies established in third countries)*, C-135/17, EU:C:2019:136, paragraph 26).

102 Concerning those two forms of investment, the Court has stated that national measures must be regarded as 'restrictions' within the meaning of Article 63(1) TFEU if they are liable to prevent or limit the acquisition of shares in the undertakings concerned or to deter investors from other Member States from investing in their capital (judgments of 21 October 2010, *Idryma Typou*, C-81/09, EU:C:2010:622, paragraph 55; of 10 November 2011, *Commission* v *Portugal*, C-212/09, EU:C:2011:717, paragraph 48; and of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 41).

103 In the present case, the legislation at issue in the main proceedings sets an asset threshold on the exercise of banking activities by Italian people's banks established as limited liability cooperative societies above which those banks must be converted into companies limited by shares, reduce their assets to below that threshold or be liquidated.

104 By limiting the extent of the economic activity that may be exercised by Italian banks taking a particular legal form, such legislation is liable to dissuade investors from Member States other than the Italian Republic and from third countries from acquiring shares in the capital of those banks and, as a result, constitute a restriction on the free movement of capital, which is prohibited, in principle, by Article 63 TFEU.

105 According to settled case-law, national measures which restrict the free movement of capital may be justified by overriding reasons relating to the general interest, provided that the restrictions are appropriate for securing attainment of the objective they pursue and do not go beyond what is necessary to attain that objective (judgment of 10 November 2011, *Commission* v *Portugal*, C-212/09, EU:C:2011:717, paragraph 81 and the case-law cited). Moreover, the Court has accepted that national legislation may constitute a justified restriction on a fundamental freedom when it is dictated by reasons of an economic nature in the pursuit of an objective in the public interest (judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 52 and the case-law cited).

106 In that regard, it should be borne in mind that, as held in paragraphs 90 to 95 above, the legislation at issue in the main proceedings meets general interest objectives recognised by the European Union.

107 As a result, provided that the asset threshold set by that legislation, to which the exercise of banking activities by Italian people's banks established as limited liability cooperative societies is subject, is able to secure attainment of those objectives and does not go beyond what is necessary to attain them, which is a matter for the referring court to ascertain, the restriction on the free movement of capital resulting from that legislation is justified.

108 In those circumstances, the answer to the second question is that Article 63 et seq. TFEU must be interpreted as not precluding legislation of a Member State that sets an asset threshold on the exercise of banking activities by people's banks established in that Member State as limited liability cooperative societies above which those banks must be converted into companies limited by shares, reduce their assets to below that threshold or be liquidated, provided that that legislation is appropriate for securing attainment of the general interest objectives pursued and does not exceed what is necessary to attain them, which is a matter for the referring court to ascertain.

Costs

109 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

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 with regard to regulatory technical standards for Own Funds requirements for institutions and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding legislation of a Member State which prohibits people's banks established in that Member State from refusing the redemption of capital instruments but which allows those banks to defer, for an unlimited period, the redemption of the shares held by the withdrawing shareholder and to limit the amount to be redeemed in full or in part, provided that the limitations on redemption imposed when exercising that option do not go beyond what is necessary, in the light of the prudential situation of the banks concerned, in order to ensure that the capital instruments they issue qualify as Common Equity Tier 1 instruments, having regard, in particular, to the matters referred to in Article 10(3) of Delegated Regulation No 241/2014, which is a matter for the referring court to ascertain.**

2. **Article 63 et seq. TFEU must be interpreted as not precluding legislation of a Member State that sets an asset threshold on the exercise of banking activities by people's banks established in that Member State as limited liability cooperative societies above which those banks must be converted into companies limited by shares, reduce their assets to below that threshold or be liquidated, provided that that legislation is appropriate for securing attainment of the general interest objectives pursued and does not exceed what is necessary to attain them, which is a matter for the referring court to ascertain.**

[Signatures]