MARGRETHE VESTAGER
MEMBER OF THE EUROPEAN COMMISSION

Brussels, 12 APR 2016
Ares(2016)1889034

Dear Mr. Berthon,

Thank you very much for your letter of 8th February 2016 regarding the bail-in of subordinated debt in Slovenian banks in December 2013. President Juncker, Vice-President Katainen and Commissioner Hill asked me to reply on their behalf.

Your main concern is that a number of investors in Slovenian subordinated bank debt might not have been properly informed about the risk characteristics of their investments. Concretely you would like to understand why those investors – unlike in some other countries –have not been compensated yet for mis-selling.

First of all, on the concept of bail-in, investors (including subordinated debtholders) in a bank - as in any other company - take the risk of losing in part or in full their investment should the bank not be able to repay its debt out of the proceeds generated by its operations. Investors holding junior debt accept a higher risk in exchange for a higher remuneration; it is therefore normal that they share the cost of the restructuring burden when those risks materialise. When investors are shielded from the losses they incur as a result of risky choices, it is typically the state, and ultimately taxpayers, who have to pay for those losses. At the same time, no category of investors, including subordinated debtholders should be worse off than in a liquidation scenario.

In order to avoid a widely divergent implementation of the burden sharing rules across Member States, since the 1st August 2013 the Commission has applied in State aid cases the burden sharing rules of its 2013 Banking Communication. Those rules provide that "*State aid must not be granted before equity, hybrid capital and subordinated debt have fully contributed to off-set any losses*".

Detailed bail-in and burden sharing rules are also at the heart of the so-called Banking Recovery and Resolution Directive, which the European Parliament and the Council adopted on 15th May 2014.

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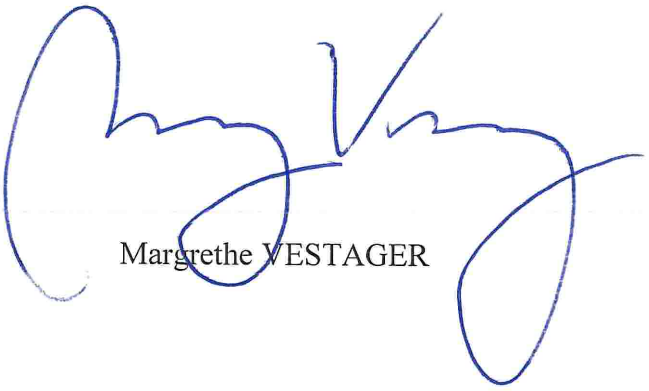
A separate issue from the nature and aim of bail-in is the treatment of investors who might have been the victim of mis-selling practices. EU law (and in particular the MIFID rules) aims to prevent such mis-selling and protect the rights of shareholders and other investors. Holders of bailed-in subordinated debt instruments who believe that they have been victim of mis-selling practices can seek compensation in court in line with applicable national rules. Those legal procedures, however, would primarily fall within the jurisdiction of the national courts. Member States could also take the initiative to develop out-of-court procedures compliant with State aid and other relevant rules (as it has been done in other countries, such as Spain).

Yours sincerely,



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