



Court of Justice of the European Union

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Judgment in Case C-425/19 P

Commission v Italy, Fondo interbancario di tutela dei depositi, Banca d'Italia et Banca Popolare di Bari SCpA

Press and Information

The Court of Justice dismisses the appeal brought by the Commission against the judgment of the General Court concerning the measures adopted by a consortium of Italian banks to support one of its members

The General Court rightly found that those measures do not constitute State aid because they are not imputable to the Italian State

In 2013, Banca Popolare di Bari SCpA (BPB), an Italian bank, expressed its interest in subscribing to a capital increase in Banca Tercas (Tercas), another Italian private equity bank, which had been placed under special administration following irregularities identified by Banca d'Italia, the Italian supervisory authority of the banking sector.

This expression of interest by BPB was, however, made subject to the condition that the **negative equity of Tercas be covered in full by the Fondo Interbancario di Tutela dei Depositi (FITD). The latter is a mutual consortium of banks governed by private law** which is required to intervene under the statutory deposit guarantee provided for in case of the compulsory liquidation of one of its members. The FITD has the power, in addition, to take preventive measures to support a member that is placed under special administration. That power requires, however, prospects of recovery and a lesser burden to be expected compared with the burden that would be incurred by the intervention of the FITD under the statutory deposit guarantee in the event of the compulsory liquidation of that member.

In 2014, after having satisfied itself that preventive measures for the benefit of Tercas were economically more advantageous than reimbursement of that bank's depositors in the event of compulsory liquidation, **the FITD decided to cover the negative equity of Tercas and to grant it certain guarantees. Those measures were approved by Banca d'Italia.**

By decision of 23 December 2015,¹ **the Commission found that that intervention of the FITD for the benefit of Tercas constituted unlawful State aid** granted by Italy to Tercas and ordered its recovery.

Italy, BPB and the FITD, supported by Banca d'Italia, brought actions to have that decision annulled. **By judgment of 19 March 2019,² the General Court upheld those actions and annulled the decision of the Commission,** on the ground that the conditions for the intervention of the FITD to be classified as State aid were not satisfied, since it was neither imputable to the Italian State nor financed through the resources of that Member State.³

By dismissing the appeal brought by the Commission, the Court of Justice, sitting as the Grand Chamber, clarifies its case-law on the imputability to the State of aid measures

1 Commission Decision (EU) 2016/1208 of 23 December 2015 on State aid granted by Italy to the Bank Tercas (Case SA.39451 (2015/C) (ex 2015/NN)) (OJ 2016 L 203, p. 1).

2 Judgment of 19 March 2019, *Italy v Commission*, [T-98/16](#), [T-196/16](#) and [T-198/16](#); see also [Press release No° 34/19](#).

3 Classification of a measure as 'State aid' for the purposes of Article 107(1) TFEU requires four conditions to be satisfied, namely, that there be intervention by the State or through State resources, that the intervention be liable to affect trade between Member States, that it confer a selective advantage on the beneficiary and that it distort or threaten to distort competition.

granted by an entity governed by private law which is neither an organisation of the State nor a public undertaking.

Findings of the Court of Justice

The Court of Justice recalls that, in order for it to be possible to categorise advantages as ‘aid’ within the meaning of Article 107(1) TFEU, they must be granted directly or indirectly through State resources and **be imputable to the State.**

As regards, specifically, the imputability to the Italian authorities of the measures adopted by the FITD for the benefit of Tercas, the Court of Justice finds, next, that **the General Court did not err in finding that the evidence put forward by the Commission to demonstrate the influence of the Italian public authorities on the FITD did not allow the measures adopted for the benefit of Tercas to be imputed to the Italian authorities.**

In that regard, the Court of Justice takes the view that the General Court correctly applied the case-law according to which it is for the Commission to demonstrate, on the basis of a set of indicators, that the measures at issue were imputable to the State and, accordingly, did not require the Commission to meet a higher standard of proof as to the imputability of an advantage to the State solely on account of the fact that the FITD is a private entity.

In that respect, the Court of Justice points out that it follows from the fact that the entity that provided the aid is a private entity that the appropriate evidence for the purpose of demonstrating that the measure is imputable to the State differs from that required where the entity providing the aid is a public undertaking.

Accordingly, the General Court did not impose different standards of proof but, rather, applied the settled case-law of the Court of Justice according to which the appropriate evidence for the purpose of demonstrating the imputability of an aid measure necessarily arises from the circumstances of the case and the context in which that measure was taken, and **the absence of a link of a capital nature between the FITD and the State** is clearly relevant in that regard.

The Court of Justice makes clear, in addition, that its case-law on the concept of ‘emanation of the State’, which allows individuals to rely on unconditional and sufficiently precise provisions of a directive that is not transposed or is incorrectly transposed, against organisations or bodies which are subject to the authority or control of the State, cannot be applied to the question whether aid measures are imputable to the State for the purposes of Article 107(1) TFEU.

Moreover, the Court of Justice rejects the Commission’s argument alleging the risk of circumvention of Banking Union legislation. The Commission submitted in that respect that refusal to impute to the State authorities measures adopted by a body such as the FITD for the benefit of a private equity bank entailed a risk of circumvention of Article 32 of Directive 2014/59,⁴ which provides for resolution where a credit institution requires extraordinary public financial support, amounting to State aid. In that regard, the Court of Justice notes it could still be possible for a measure taken by a deposit guarantee scheme to be classified as State aid capable of triggering resolution, depending on the features of the deposit guarantee scheme and the particular measure.

Lastly, **the Court of Justice confirms that it is on the basis of the analysis of all of the evidence on which the Commission relied, taken in its proper context, that the General Court found that the Commission had erred in law in taking the view that the Italian authorities had exercised substantial public control in establishing the measures adopted by the FITD for the benefit of Tercas.**

⁴ Article 32(4)(d) of Directive 2014/59/EU Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ 2014 L 173, p. 190).

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355