



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-98/16, Italy v Commission, T-196/16, Banca Popolare di Bari SCpA v Commission, and T-198/16 Fondo interbancario di tutela dei depositi v Commission

The General Court annuls the Commission's decision that support measures adopted by a consortium governed by private law for the benefit of one of its members constituted 'aid granted by a State'

In 2013, an Italian bank, Banca Popolare di Bari ('BPB'), expressed an interest in the subscription of additional capital in another Italian bank, Banca Tercas ('Tercas'), which had been placed under special administration in 2012 as a result of irregularities identified by Banca d'Italia (the public authority performing the function of the Central Bank of Italy).

Among the conditions imposed by BPB for that transaction was that the Fondo Interbancario di Tutela dei Depositi ('the FITD') should cover Tercas's deficit and that Tercas should be audited. The FITD is a consortium of banks governed by private law acting as a mutual benefit body, which has the power to adopt measures for the benefit of its members not only in the form of a statutory guarantee of deposits in the event that one of its members has been placed under compulsory liquidation (mandatory intervention) but also on a voluntary basis, in accordance with its statute, if it is possible by means of such intervention to reduce the burden that its members may have to bear as a result of guaranteeing deposits (voluntary intervention, including voluntary intervention by way of support or preventive intervention).

In 2014, after satisfying itself that the measures adopted for the benefit of Tercas were economically more beneficial than reimbursement of that bank's depositors, the FITD decided to cover Tercas's negative equity and to grant it certain guarantees. Those measures were approved by Banca d'Italia.

The Commission initiated a detailed investigation into those measures as it was uncertain whether they were compatible with EU rules on State aid. By decision of 23 December 2015,¹ the Commission concluded that the measures in question constituted State aid granted by Italy to Tercas.

Italy (Case T-98/16), BPB (Case T-196/16) and the FITD, supported by Banca d'Italia (Case T-198/16) asked the General Court to annul the Commission's decision.

By today's judgment, **the General Court annuls the Commission's decision, as it concluded, incorrectly, that the measures granted to Tercas entailed the use of State resources and were imputable to the State.**

As regards the concept of 'aid granted by a State', within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union, the Court observes that such aid must satisfy two separate cumulative conditions: it must be imputable to the State and be granted through State resources.

With regard to the **requirement that the aid must be imputable to the State**, the Court notes that, in a situation in which the measures adopted for the benefit of Tercas were taken by a private

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).

entity, namely the FITD, the Commission had to have sufficient evidence to conclude that those measures were taken under the actual influence or control of the public authorities and that, accordingly, they were, in fact, imputable to the State. In the present case, the Commission did not have sufficient evidence to reach such a conclusion. Indeed, the case-file contains a great number of items of evidence indicating that the **FITD acted independently when it adopted the measures for the benefit of Tercas**.

In that regard, the Court considers, first, that the authority conferred on the FITD by Italian law is simply to reimburse depositors (up to a maximum of €100 000 per depositor), as part of a system of guaranteeing deposits, where a bank which is a member of the consortium is placed under compulsory liquidation. Outside that context, the FITD does not operate on the basis of a public mandate imposed by Italian law. **The support measures adopted for the benefit of Tercas** therefore have a different purpose from that of the guarantee deposit system in a case entailing compulsory liquidation and **do not constitute the fulfilment of a public mandate**.

The Court goes on to observe that the Commission has **failed to prove that other Italian public authorities were involved in the adoption of the measures at issue**. In that connection, the Court notes that the FITD is a consortium governed by private law which acts, in accordance with its statute, 'on behalf of and in the interests of the members of the consortium'. Moreover, its management bodies are appointed by the general meetings of the FITD and are, like that body, made up solely of representatives of the banks which are members of the consortium. In those circumstances, the Court states that the authorisation by Banca d'Italia of the measures adopted by the FITD for the benefit of Tercas does not constitute evidence on the basis of which the measures at issue may be imputed to the Italian State. When Banca d'Italia authorised that aid, it simply checked whether it complied with the regulatory framework for prudential supervisory purposes and did not require the FITD to take any steps in support of Tercas. Furthermore, the representatives of Banca d'Italia who attend the meetings of the FITD's management bodies had a purely passive role in this case as simple observers. The involvement of Banca d'Italia in the negotiations between the FITD, BPB and the extraordinary administrator of Tercas simply took the form of legitimate ordinary dialogue with the supervisory authority, which did not have any effect on the FITD's decision to take steps for the benefit of Tercas.

As regards the **requirement concerning the financing of the measure adopted through State resources**, the Court concludes that the Commission has **failed to establish that the funds granted to Tercas by way of support measures by the FITD were controlled by the Italian public authorities**. The Court states, in that regard, that the measures adopted by the FITD for the benefit of Tercas originated in a proposal initially made by BPB and subsequently taken up by Tercas, in accordance with the statute of the FITD, using funds provided by the banks that are members of the FITD, and in the interest of the members of the FITD, since granting aid to Tercas was less costly than implementing the statutory guarantee in favour of Tercas's depositors in the event that it was placed under compulsory liquidation.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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