



Court of Justice of the European Union

**PRESS RELEASE No 135/20**

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Advocate General's Opinion in Case C-425/19 P  
Commission v Italy, Banca Popolare di Bari SCpA,  
Fondo interbancario di tutela dei depositi,  
Banca d'Italia

Press and Information

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**According to Advocate General Tanchev, the Court should dismiss the appeal of the Commission against the judgment of the General Court on support measures adopted by an Italian consortium of banks for the benefit of one of its members**

*The General Court was right in considering that those measures did not constitute State aid as they did not entail the use of State resources and were not imputable to the 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,<sup>1</sup> the Commission concluded that the measures in question constituted State aid granted by Italy to Tercas.

Italy, BPB and the FITD, supported by Banca d'Italia, asked the General Court to annul the Commission's decision.

By judgment of 19 March 2019<sup>2</sup>, the General Court found that the Commission had incorrectly concluded that the measures granted to Tercas entailed the use of State resources and were imputable to the State. Given that, in the absence of fulfilment of these criteria, the measures at issue could not be considered as constituting State aid, the General Court annulled the Commission's decision.

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<sup>1</sup> 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).

<sup>2</sup> Judgment of 19 March 2019, Joined Cases Italy v Commission, Banca Popolare di Bari SCpA v Commission and Fondo interbancario di tutela dei depositi v Commission ([T-98/16](#), [T-196/16](#) and [T-198/16](#)) (see Press Release [No 34/19](#)).

The Commission has brought an appeal against the General Court's judgment before the Court of Justice.

In today's Opinion, Advocate General Mr Evgeni Tanchev proposes that **the Court should dismiss the appeal brought by the Commission.**

First, the Advocate General **rejects the Commission's argument that the General Court set a higher standard of proof for establishing that an aid measure was imputable to the State where that measure was taken by a private entity rather than a public undertaking.**

In this regard, the Advocate General takes the view that the General Court did not require that, in the case of an aid measure taken by a private entity, the Commission should demonstrate that that measure has been adopted on the binding instructions of the public authorities. On the contrary, in accordance with the case-law relating to a situation where the entity granting the aid is a public undertaking,<sup>3</sup> the General Court accepted that the proof of an actual influence or control by the public authorities over the adoption by a private entity of an aid measure might be inferred from indicators arising from the circumstances of the case.

Likewise, the Advocate General finds that the General Court, contrary to what the Commission contends, did not hold that, in order to establish that an aid measure taken by a private entity was imputable to the State, the Commission had to show that the involvement of the public authorities had an effect on the content of that measure. In this regard, the Advocate General points out that the General Court simply established that the Italian legislation did not confer on Banca d'Italia, in the context of the authorisation of the measures at issue, the power to amend the content of those measures. Similarly, the General Court did not examine whether the participation of Banca d'Italia in informal meetings prior to the adoption of the measures at issue had an impact on the content of these measures but appears to have only taken note of the fact that its participation was purely passive as it was exclusively for information purposes.

Moreover, the Advocate General rejects the Commission's allegation that the General Court required it to prove that the public authorities were able to influence every step of the procedure which led to the adoption of the measures at issue.

Then, the Advocate General sets out that, even if the Court finds that the General Court applied, in breach of the case-law, a higher standard of proof on account of the private nature of the entity granting the aid, **the Commission's appeal should nevertheless be dismissed.** In this regard, the Advocate General considers that, especially in the light of the nature of the role of Banca d'Italia in the context of the adoption of the measures at issue, the indicators adduced by the Commission do not enable the intervention in question to be imputed to the State.

Second, the Advocate General considers that, contrary to what the Commission argues, **the General Court did not require the Commission to meet a higher standard of proof for establishing that an aid measure is granted through State resources where the resources used to finance that measure are administered by a private entity rather than by a public undertaking.**

Third, the Advocate General refutes the Commission's allegation that the General Court assessed the evidence piecemeal, without considering it as a whole and without taking into account its broader context.

Finally, the Advocate General rejects the Commission's argument that the General Court distorted the Italian Banking Act and the statute of the FITD.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are

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<sup>3</sup> Judgment of 16 May 2002, France v Commission ([C-482/99](#)).

responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An appeal, on a point or points of law only, may, under certain conditions, 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 Opinion is published on the CURIA website on the day of delivery.*

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