



## PRESS RELEASE No 146/24

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Judgment of the Court in Joined Cases C-512/22 P | Fininvest v ECB and Others and C-513/22 P | Berlusconi v ECB and Others

### **Prudential supervision of credit institutions: the Court annuls the 2016 ECB decision refusing the acquisition of a qualifying holding in Banca Mediolanum by Silvio Berlusconi**

*The ECB could not lawfully oppose Mr Berlusconi's ownership of a qualifying holding in Banca Mediolanum, as that situation resulted only from the interested party having continued to own a qualifying holding which he had acquired prior to the transposition of the provisions of EU law on which the ECB had relied*

Fininvest is an Italian holding company in which Mr Silvio Berlusconi held a majority interest. That company held shares in Mediolanum, a financial company listed on the stock market, which, in turn, owned 100% of the capital of the credit institution Banca Mediolanum.

In 2014, the Bank of Italy ordered the sale, within a period of 30 months, of Fininvest's holding in Mediolanum in excess of 9.99% and the immediate suspension of the voting rights linked to the corresponding shares. The reason for the adoption of that measure was that Mr Berlusconi had been found guilty of tax fraud <sup>1</sup> and consequently no longer met the reputation condition to which ownership of such a qualifying holding is subject. The decision of the Bank of Italy was annulled by the Italian Council of State on 3 March 2016. In the meantime, Mediolanum was absorbed in 2015 by its subsidiary, Banca Mediolanum.

Following that absorption and the judgment of the Italian Council of State referred to above, the Bank of Italy and the ECB considered that Mr Berlusconi and Fininvest had acquired a qualifying holding <sup>2</sup> in Banca Mediolanum. However, EU law <sup>3</sup> provides that such an acquisition must be preceded by a notification and must be assessed by the competent national authority, which then forwards a proposal for a decision to the ECB. It is then for the ECB to oppose or not oppose the acquisition of the qualifying holding in question.

The ECB, notified of the case by the Bank of Italy, opposed the acquisition by Mr Berlusconi of a qualifying holding in Banca Mediolanum, on the ground that he did not satisfy the reputation criterion.

Since the action brought by Mr Berlusconi and Fininvest for annulment of that ECB decision was dismissed by the General Court <sup>4</sup>, Fininvest and the legal heirs of Mr Berlusconi brought appeals against that judgment.

**The Court sets aside the judgment of the General Court and annuls the ECB decision at issue.**

It considers that the **General Court distorted the facts of the dispute and made an error of law** in holding that the appellants acquired a qualifying holding in Banca Mediolanum in 2016. That error results from a misinterpretation of the scope of the 2014 decision of the Bank of Italy, which, contrary to the General Court's finding, did not have the effect of reducing Fininvest's holding in Mediolanum, but merely suspending the voting rights linked to the shares subject to an obligation to sell. The sale was only to take place subsequently, within 30 months, through a trust responsible for the sale. On the date of the annulment delivered by the Italian Council of

State, the holding at issue therefore remained unchanged. The alteration of the ownership structure of that holding due to the absorption of Mediolanum by Banca Mediolanum did not alter that analysis.

Consequently, Mr Berlusconi could not be considered to have acquired a qualifying holding in 2016, which would have required notification and assessment by the competent authorities. He merely continued to own a qualifying holding which had been acquired well before, on a date when the provisions of EU law applied by the ECB had not yet been transposed into Italian law. As those provisions do not have retroactive effect, **the ECB could not lawfully oppose Mr Berlusconi's ownership of a qualifying holding in Banca Mediolanum.**

**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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> Mr Berlusconi was rehabilitated in 2018.

<sup>2</sup> Point 36 of Article 4(1) of [Regulation No 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms defines a qualifying holding as a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking.

<sup>3</sup> Inter alia, Regulation No 575/2013 referred to above and [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.

<sup>4</sup> Judgment of the General Court of 11 May 2022, Fininvest and Berlusconi v ECB, [T-913/16](#) (See also press release [No 80/22](#)).