

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(1)(a) and (b) of Regulation No 207/2009.

Action brought on 23 December 2016 — Fininvest and Berlusconi v ECB**(Case T-913/16)**

(2017/C 063/47)

*Language of the case: Italian***Parties**

Applicants: Finanziaria d'investimento Fininvest S.p.A. (Fininvest) (Rome, Italy) and Silvio Berlusconi (Rome) (represented by: R. Vaccarella, A. Di Porto, M. Carpinelli and A. Saccucci, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

- Annul the decision of 25 October 2016 of the European Central Bank, which decided 'to oppose the acquisition by the Acquirers of a qualifying holding in the target Company';
- Order the European Central Bank to pay the costs.

Pleas in law and main arguments

The present action has been brought against the decision of 25 October 2016 adopted by the European Central Bank (ECB/SSM/2016-7LVZ]6XRIE7VNZ4UBX81/4) under Articles 22 and 23 of 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (CRD IV) (OJ 2013 L 176, p. 338), paragraph 5 of Article 1, Article 4(1)(c) and Article 15(3) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (the SSM Regulation) (OJ 2013 L 287, p. 63), Article 87 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1), and Articles 19, 22 and 25 of the Consolidated Italian Banking Code, by which the Central Bank opposed the acquisition, by Finanziaria d'investimento Fininvest S.p.A., of a qualifying holding in a credit institution (the target company).

In support of their action, the applicants rely upon eight pleas in law, divided into three blocks.

1. First plea in law, alleging misapplication of Articles 22 and 23 of the CRD IV, infringement of paragraph 5 of Article 1, Article 4(1)(c) and Article 15 of the SSM Regulation and of Articles 86 and 87 of the SSM Framework Regulation, including in relation to Articles 4(1), 5(2), and 13(2) TEU and Article 127(6) TFEU, and misuse of powers.
2. Second, subsidiary plea in law, based on the fact that the CRD IV, if applied extensively to the present case, infringes the general principle of non-retroactivity of secondary legislation.
3. Third plea in law, alleging infringement of the principle of legal certainty and the principle of *res judicata* in relation to final judgment No 882 of 3 March 2016 of the Consiglio di Stato, which ruled on the effects of the merger authorisation issued by the Banca d'Italia in relation to Fininvest's holding in the target company.

— The applicants claim in that regard that this first block of pleas in law attacks the very basis of the contested decision and in particular contests the interpretation of the CRD IV adopted by the ECB as both legally flawed and unlawfully expanding the specific powers conferred on the ECB by the SSM Regulation and by the SSM Framework Regulation, and as detrimental to the *res judicata*, already in existence at national level as a result of the final judgment of the Consiglio di Stato of 3 March 2016 in relation to the holding in the target company.

4. Fourth plea in law, alleging infringement of Article 4(3) of the SSM Regulation, Article 23(1) and (4) of the CRD IV, and the general principles of lawfulness, legal certainty and the foreseeability of the administrative action in relation to the ECB's application of the national transposing legislation, and infringement of the general principles of lawfulness and legal certainty in relation to the ECB's considering that the *Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC, adopted in 2008 by the CEBS, CESR and CEIOPS Committees*, could be invoked against the applicants.
5. Fifth, subsidiary plea in law, alleging infringement of essential procedural requirements in the form of failure to carry out a proper inquiry and failure to provide a statement of reasons in relation to the criterion of the 'likely influence of the proposed acquirer on [the] credit institution' (Article 23(1) of the CRD IV).
6. Sixth plea in law, alleging infringement of the general principle of proportionality, because the contested decision, in essence, produces the effects of a '*provvedimento ablatorio*' [a measure by which the public authorities compel a person to sacrifice a private interest for the public good], requiring the forced sale of a substantial shareholding, and infringement of Articles 16 and 17 of the Charter of Fundamental Rights of the European Union and of the corresponding general principles of EU law as derived from the European Convention on Human Rights and the constitutional traditions common to the Member States.

— The applicants claim in that regard that this second block of pleas in law concerns the assessment carried out by the ECB and attacks, first, the reconstruction of the national legislation carried out by the ECB and, second, the failure to conduct a specific assessment of the 'likely influence of the proposed acquirer on [the] credit institution' and the failure to observe the principle of proportionality in the area of prudential supervision.

The third block of pleas in law, by contrast, is dedicated to a series of serious procedural defects alleged to have invalidated the supervisory procedure and the final decision of the ECB.

7. Seventh plea in law, alleging breach of the rights of the defence which should have been 'fully respected' (Article 22(2) of the SSM Regulation and Article 32(1) of the SSM Framework Regulation) and of the right to sound administration affirmed by Article 41 of the Charter of Fundamental Rights, owing to the applicants' delayed access to the case-file and to the fact that it was impossible for them to know the content of the act of the ECB on the basis of which the authorisation procedure was initiated. The applicants also allege misapplication of Article 32(1) and (5) of the SSM Framework Regulation.

8. Eighth plea in law, alleging unlawfulness, on the basis of Article 227 TFEU, of Article 31(3) of the SSM Framework Regulation for breach of the rights of the defence guaranteed by Article 41 of the Charter of Fundamental Rights and infringement of the corresponding general principles of law derived from the constitutional traditions common to the Member States.

Action brought on 3 January 2017 — J.M.-E.V. e hijos v EUIPO — Masi (MASSI)

(Case T-2/17)

(2017/C 063/48)

Language in which the application was lodged: English

Parties

Applicant: J.M.-E.V. e hijos, SRL (Granollers, Spain) (represented by: M. Ceballos Rodríguez and J. Güell Serra, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Alberto Masi (Milan, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'MASSI' — EU trade mark No 414 086

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 4 October 2016 (rectified by decision of 3 November 2016) in Case R 793/2015-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- reject the application for a declaration of invalidity filed by Mr. Alberto Masi against EUTM Registration No. 414086 'MASSI' in class 12;
- order EUIPO, and the other party to the proceedings before EUIPO in case it takes part in these proceedings, to bear the costs.

Pleas in law

- Infringement of Article 56(3) of Regulation No 207/2009 (res judicata);
 - Lack of application of Article 53(1)(a) in connection with Article 8(2)(c) of Regulation No. 207/2009.
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