



## Reports of Cases

### Case C-219/17

**Silvio Berlusconi and Finanziaria d'investimento Fininvest SpA (Fininvest)**  
v  
**Banca d'Italia and Istituto per la Vigilanza Sulle Assicurazioni (IVASS)**

(Request for a preliminary ruling from the Consiglio di Stato)

(Reference for a preliminary ruling — Approximation of laws — Prudential supervision of credit institutions — Acquisition of a qualifying holding in a credit institution — Procedure governed by Directive 2013/36/EU and by Regulations (EU) No 1024/2013 and No 468/2014 — Composite administrative procedure — Exclusive decision-making power of the European Central Bank (ECB) — Action brought against preparatory acts adopted by the national competent authority — Claim that the force of *res judicata* attaching to a national decision has been disregarded)

Summary — Judgment of the Court (Grand Chamber), 19 December 2018

1. *Actions for annulment — Jurisdiction of the EU judicature — Examination of the legality of a national act forming part of a composite administrative procedure — Regard to the discretion of the EU institution when adopting the EU act resulting from the process*

(Art. 263 TFEU)

2. *Economic and monetary policy — Economic policy — Supervision of the EU financial sector — Single supervisory mechanism — Prudential supervision of credit institutions — Acquisition of a qualifying holding in a credit institution — Assessment by the national authorities — Decision of the European Central Bank adopted on the basis of a national proposal — Jurisdiction of the national court to review the legality of the proposal — No such jurisdiction — Reliance on alleged disregard of the force of *res judicata* attaching to a national decision — Irrelevant*

(Art. 263 TFEU; Council Regulation No 1024/2013, Art. 15; European Central Bank Regulation No 468/2014, Arts 85 to 87; European Parliament and Council Directive 2013/36, Arts 22 and 23)

1. See the text of the decision.

(see paras 43-46)

2. Article 263 TFEU must be interpreted as precluding national courts from reviewing the legality of decisions to initiate procedures, preparatory acts or non-binding proposals adopted by competent national authorities in the procedure provided for in 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, in Articles 4(1)(c) and 15 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

and in Articles 85 to 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). It is immaterial in that regard that a specific action for a declaration of invalidity on the ground of alleged disregard of the force of *res judicata* attaching to a national judicial decision has been brought before a national court.

Where the EU legislature opts for an administrative procedure under which the national authorities adopt acts that are preparatory to a final decision of an EU institution which produces legal effects and is capable of adversely affecting a person, it seeks to establish between the EU institution and the national authorities a specific cooperation mechanism which is based on the exclusive decision-making power of the EU institution. In order for such a decision-making process to be effective, there must necessarily be a single judicial review, which is conducted, by the EU Courts alone, only once the decision of the EU institution bringing the administrative procedure to an end has been adopted, a decision which is, alone, capable of producing binding legal effects such as to affect the applicant's interests by bringing about a distinct change in his legal position.

Consequently, it must be held that the EU Courts alone have jurisdiction to determine, as an incidental matter, whether the legality of the ECB's decision of 25 October 2016 is affected by any defects rendering unlawful the acts preparatory to that decision that were adopted by the Bank of Italy. That jurisdiction excludes any jurisdiction of national courts in respect of those acts, and it is irrelevant in that regard that an action such as the *azione di ottemperanza* has been brought before a national court. In that last regard, as the Commission has observed, the ECB's exclusive competence to decide whether or not to approve the acquisition of a qualifying holding in a credit institution, and the corresponding exclusive jurisdiction of the EU Courts to review the validity of such a decision and, as an incidental matter, to determine whether the preparatory national acts are vitiated by defects such as to affect the validity of the ECB's decision, preclude a national court from being able to hear an action contesting the compliance of such an act with a national provision relating to the principle of *res judicata* (see, by analogy, judgment of 18 July 2007, *Lucchini*, C-119/05, EU:C:2007:434, paragraphs 62 and 63).

(see paras 48, 49, 57-59, operative part)