Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

19 September 2024 (*)

(Appeal – Economic and monetary policy – Prudential supervision of credit institutions – Directive 2013/36/EU – Regulation (EU) No 1024/2013 – Specific supervisory tasks assigned to the European Central Bank (ECB) – Assessment of acquisitions of qualifying holdings – Opposition to the acquisition of a qualifying holding)

In Joined Cases C-512/22 P and C-513/22 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 26 and 27 July 2022, respectively,

Finanziaria d'investimento Fininvest SpA (Fininvest), established in Rome (Italy), represented by A. Baldaccini, M. Carpinelli, A. Saccucci and R. Vaccarella, avvocati,

appellant in Case C-512/22 P,

the other parties to the proceedings being:

Silvio Berlusconi,

applicant at first instance,

European Central Bank (ECB), represented by G. Buono and C. Hernández Saseta, acting as Agents, and by M. Lamandini, avvocato,

defendant at first instance,

European Commission, represented initially by V. Di Bucci, A. Nijenhuis, A. Steiblytė and D. Triantafyllou, subsequently by P.A. Messina, A. Nijenhuis, A. Steiblytė and D. Triantafyllou, and lastly by P.A. Messina, A. Steiblytė and D. Triantafyllou, acting as Agents,

intervener at first instance,

and

Marina Elvira Berlusconi,

Pier Silvio Berlusconi,

Barbara Berlusconi,

Eleonora Berlusconi,

Luigi Berlusconi,

legal heirs of Mr Silvio Berlusconi, represented initially by A. Di Porto, N. Ghedini, B. Nascimbene and G. Perroni, avvocati, and subsequently by A. Di Porto, B. Nascimbene and G. Perroni, avvocati,

appellants in Case C-513/22 P,

the other parties to the proceedings being:

Finanziaria d'investimento Fininvest SpA (Fininvest), established in Rome,

applicant at first instance,

European Central Bank (ECB), represented by G. Buono and C. Hernández Saseta, acting as Agents, and by M. Lamandini, avvocato,

defendant at first instance,

European Commission, represented initially by V. Di Bucci, A. Nijenhuis, A. Steiblytė and D. Triantafyllou, subsequently by P.A, Messina, A. Nijenhuis, A. Steiblytė and D. Triantafyllou, and lastly by P.A. Messina, A. Steiblytė and D. Triantafyllou, acting as Agents,

intervener at first instance,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot (Rapporteur), S. Rodin and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2024,

gives the following

Judgment

1 By their respective appeals, Finanziaria d'investimento Fininvest SpA (Fininvest), first, and, second, Ms Marina Elvira Berlusconi, Mr Pier Silvio Berlusconi, Ms Barbara Berlusconi, Ms Eleonora Berlusconi and Mr Luigi Berlusconi, legal heirs of Mr S. Berlusconi, seek to have the Court of Justice set aside the judgment of

the General Court of the European Union of 11 May 2022, *Fininvest and Berlusconi* v *ECB* (T-913/16, EU:T:2022:279; 'the judgment under appeal'), by which the General Court dismissed the action brought by Fininvest and Mr S. Berlusconi seeking annulment of the decision of the European Central Bank (ECB) ECB/SSM/2016 – 7LVZJ6XRIE7VNZ4UBX81/4 of 25 October 2016, by which the ECB decided to oppose the acquisition of a qualifying holding in Banca Mediolanum SpA by Fininvest and Mr S. Berlusconi ('the decision at issue').

I. Legal context

A. The CRD IV Directive

2 Article 3 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 (OJ 2013 L 176, p. 338, 'the CRD IV Directive'), entitled 'Definitions', provides:

'1. For the purposes of this Directive, the following definitions shall apply:

…

(33) "qualifying holding" means qualifying holding as defined in point (36) of Article 4(1) of Regulation (EU) No 575/2013 [of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ 2013 L 176, p. 1)].'

3 Article 22, entitled 'Notification and assessment of proposed acquisitions', of that directive provides:

'1. Member States shall require any natural or legal person or such persons acting in concert (the "proposed acquirer"), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the credit institution would become its subsidiary (the "proposed acquisition"), to notify the competent authorities of the credit institution in which they are seeking to acquire or increase a qualifying holding in writing in advance of the acquisition, indicating the size of the intended holding and the relevant information, as specified in accordance with Article 23(4). …

…

6. If the competent authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

…

8. Member States shall not impose requirements for notification to, or approval by, the competent authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

…’

4 Article 23 of the CRD IV Directive, headed ‘Assessment criteria’, states:

‘1. In assessing the notification provided for in Article 22(1) and the information referred to in Article 22(3), the competent authorities shall, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on that credit institution, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in accordance with the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation, knowledge, skills and experience, as set out in Article 91(1), of any member of the management body and any member of senior management who will direct the business of the credit institution as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution in which the acquisition is proposed;

…

2. The competent authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

…’

B. Regulation No 575/2013

5 According to recital 5 of Regulation No 575/2013:

‘Together, this Regulation and Directive [2013/36] should form the legal framework governing the access to the activity, the supervisory framework and the prudential rules for credit institutions and investment firms …. This Regulation should therefore be read together with that Directive[.]’

6 Article 4 of that regulation, entitled ‘Definitions’, provides:

‘1. For the purposes of this Regulation, the following definitions shall apply:

…

(36) “qualifying holding” means 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;

…’

C. The SSM Regulation

7 Recital 11 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 (OJ 2013 L 287, p. 63; 'the SSM Regulation') states:

'A banking union should ... be set up in the [European Union], underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole and composed of a single supervisory mechanism and new frameworks for deposit insurance and resolution. ...'

8 Recital 22 of that regulation states as follows:

'An assessment of the suitability of any new owner prior to the purchase of a significant stake in a credit institution is an indispensable tool for ensuring the continuous suitability and financial soundness of credit institutions' owners. The ECB as a Union institution is well placed to carry out such an assessment without imposing undue restrictions on the internal market. The ECB should have the task of assessing the acquisition and disposal of significant holdings in credit institutions, except in the context of bank resolution.'

9 Article 1 of the SSM Regulation, headed 'Subject matter and scope', states:

'This Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage.

...'

10 Article 4 of that regulation is worded as follows:

'1. Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

...

(c) to assess notifications of the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution, and subject to Article 15;

...

3. For the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of regulations and where currently those Regulations explicitly grant options for Member States, the ECB shall apply also the national legislation exercising those options.

...'

11 Article 15 of the SSM Regulation, headed 'Assessment of acquisitions of qualifying holdings', states:

'1. Without prejudice to the exemptions provided for in point (c) of Article 4(1), any notification of an acquisition of a qualifying holding in a credit institution established in a participating Member State or any related information shall be introduced with the national competent authorities of the Member State where the credit institution is established in accordance with the requirements set out in relevant national law based on the acts referred to in the first subparagraph of Article 4(3).

2. The national competent authority shall assess the proposed acquisition, and shall forward the notification and a proposal for a decision to oppose or not to oppose the acquisition, based on the criteria set out in the acts referred to in the first subparagraph of Article 4(3), to the ECB, … and shall assist the ECB in accordance with Article 6.

3. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in relevant Union law and in accordance with the procedure and within the assessment periods set out therein.'

II. The background to the dispute and the decision at issue

12 Fininvest is a holding company incorporated under Italian law, 61.21% of which was owned by Mr S. Berlusconi. Fininvest held 30.1% of the shares in Mediolanum, a mixed financial holding company listed on the stock market, 26.5% of which was owned by Fin. Prog. Italia. Until 30 December 2015, Mediolanum owned a 100% stake in Banca Mediolanum, a credit institution.

13 Following Judgment No 35729/13 of the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which became final on 1 August 2013 and by which Mr S. Berlusconi was found guilty of tax fraud, the Banca d'Italia (Bank of Italy) found, by decision of 7 October 2014 ('the decision of the Bank of Italy of 7 October 2014') that Mr Berlusconi no longer fulfilled the reputation condition laid down in the legislation transposing Article 23(1)(a) of the CRD IV Directive. By that decision, the Bank of Italy consequently ordered Fininvest to sell its shares in Mediolanum in excess of 9.99% within 30 months from the establishment of a trust responsible for the sale, and suspended the exercise of Fininvest's voting rights corresponding to the shares to be sold during the period of time necessary for that sale to be completed.

14 Mr S. Berlusconi and Fininvest brought an action before the Consiglio di Stato (Council of State, Italy) which, on 4 December 2015, suspended the enforcement of that decision and subsequently annulled it by judgment of 3 March 2016 ('the judgment of the Consiglio di Stato (Council of State) of 3 March 2016').

15 In the meantime, Mediolanum was absorbed on 30 December 2015 by its subsidiary, Banca Mediolanum.

16 The Bank of Italy and the ECB considered that, following that merger and the judgment of the Consiglio di Stato (Council of State) of 3 March 2016, Fininvest and Mr S. Berlusconi had acquired a qualifying holding in Banca Mediolanum and requested that they notify that acquisition in accordance with national legislation transposing Article 22 et seq. of the CRD IV Directive.

17 As no answer to that request was received, the Bank of Italy decided, on 3 August 2016, to open, of its own motion, the procedure for assessing that acquisition.

18 On 15 October 2016, the Bank of Italy forwarded to the ECB, pursuant to Article 15(2) of the SSM Regulation, a proposal for a decision containing an adverse opinion as to the reputation of the acquirers of the qualifying holding in question and invited the ECB to oppose the acquisition.

19 By the decision at issue, the ECB opposed the acquisition by Fininvest and Mr S. Berlusconi of that qualifying holding in Banca Mediolanum.

III. The procedure before the General Court and the judgment under appeal

20 By application lodged at the Registry of the General Court on 23 December 2016, Fininvest and Mr S. Berlusconi brought an action for annulment of the decision at issue.

21 By the judgment under appeal, the General Court dismissed their action.

IV. Procedure before the Court of Justice and forms of order sought

22 By their appeals, worded almost identically, Fininvest (Case C-512/22 P) and Mr S. Berlusconi (Case C-513/22 P) claimed that the Court should:

- set aside the judgment under appeal;
- consequently, annul the decision at issue;
- in the alternative, set aside the judgment under appeal and refer the case to another Chamber of the General Court;
- order the ECB to pay the costs, including those incurred at first instance; and
- as a measure of inquiry, should the Court deem it necessary, order that the minutes of the hearing of 16 September 2021 before the General Court and the sound recording of the hearing be added to the case file, implemented in the manner deemed appropriate by the Court.

23 By decision of 29 August 2022, Cases C-512/22 P and C-513/22 P were joined for the purposes of the written and oral parts of the procedure and the judgment.

24 Following the death of Mr S. Berlusconi, Ms M.E. Berlusconi, Mr P.S. Berlusconi, Ms B. Berlusconi, Ms E. Berlusconi and Mr L. Berlusconi declared, by letter of 6 November 2023, that they would pursue Case C-513/22 P as legal heirs of the deceased.

V. The requests that the oral part of the procedure be reopened

25 By letter lodged at the Court Registry on 13 June 2024, the ECB requested that the oral part of the procedure be reopened under Article 83 of the Rules of Procedure of the Court.

26 In that connection, it should be borne in mind that the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the interested persons (judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 28 and the case-law cited).

27 In support of its request, the ECB argues that the Advocate General based his Opinion on a new element which had not been discussed by the parties, that is, the existence of an autonomous concept of EU law of 'indirect qualifying holding'.

28 In the present situation, the dispute must not be decided on the basis of an argument that has not been debated between the parties. Indeed, both at first instance before the General Court and in the first grounds of the appeals, the parties had the opportunity to submit arguments on the concept of 'qualifying holding' within the meaning of EU law and the direct or indirect nature of the shares owned by Fininvest and Mr S. Berlusconi in Banca Mediolanum.

29 It is therefore appropriate, after hearing the Advocate General, to reject the request that the oral part of the procedure be reopened.

30 By letter lodged at the Court Registry on 15 July 2024, the legal heirs of Mr S. Berlusconi and Fininvest also requested that the oral part of the procedure be reopened in order to be able to state their position on the request made by the ECB that the oral part of the procedure be reopened and on the new arguments raised by that institution in that request.

31 However, given that the request made by the ECB that the oral part of the procedure be reopened was rejected, it is appropriate, after hearing the Advocate General, also to reject the request made by the legal heirs of Mr S. Berlusconi and Fininvest that the oral part of the procedure be reopened.

VI. The appeals

A. The admissibility of the appeals

1. Arguments of the parties

32 The ECB submits, in the first place, that the rehabilitation of Mr S. Berlusconi in 2018, made it possible for him to apply for reassessment of his reputation in the context of a new request for authorisation to own a qualifying holding in Banca Mediolanum. That rehabilitation consequently deprives the appellants of their interest in obtaining the annulment of the decision at issue and that of the judgment under appeal and results in their appeals being inadmissible.

33 In the second place, the ECB is of the view that the appeals, in which the appellants do no more than repeat arguments which have already been rejected by the General Court, are also inadmissible on that ground.

34 The appellants submit that those pleas of inadmissibility should be rejected.

2. Findings of the Court

35 In the first place, it must be borne in mind that, according to settled case-law, an applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible. That purpose must, like the interest in bringing proceedings, continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action or, as the case may be, the appeal, must be liable, if successful, to procure an advantage for the party bringing it (judgment of 7 September 2023, *Versobank* v *ECB*, C-803/21 P, EU:C:2023:630, paragraph 159 and the case-law cited).

36 In that connection, the ECB submits that the rehabilitation of Mr S. Berlusconi in 2018 makes it possible for the appellants to apply for reassessment of his reputation in the context of a new request for authorisation to own a qualifying holding in Banca Mediolanum, which has consequently deprived the appellants of their interest in obtaining annulment of the decision at issue. As Mr Berlusconi was rehabilitated before the appeals were brought, they are therefore inadmissible according to the case-law cited in the preceding paragraph.

37 However, contrary to the ECB's argument, Mr S. Berlusconi's rehabilitation does not procure the same advantage to the appellants as the annulment of the decision at issue.

38 First, even assuming that Mr S. Berlusconi's rehabilitation would lead to the disappearance of the reason why the ECB opposed, by the decision at issue, the acquisition by the appellants of a qualifying holding in Banca Mediolanum, this does not mean, however, that it leads to the disappearance of that decision, contrary to the effect of the annulment of that decision by the Court.

39 Second, while the decision at issue would be deemed never to have existed if it were annulled, Mr S. Berlusconi's rehabilitation produces its effects only from the date on which it took place, that is, in 2018.

40 It follows from the foregoing that the plea of inadmissibility based on the claim that Mr S. Berlusconi's rehabilitation has deprived the appellants of an interest in bringing proceedings against the decision at issue must be rejected.

41 In the second place, it must be borne in mind that, according to settled case-law, an appeal that amounts in reality to no more than a request for re-examination of the application submitted to the General Court falls outside the jurisdiction of the Court of Justice (see, to that effect, judgment of 11 June 2024, *Commission* v *Deutsche Telekom*, C-221/22 P, EU:C:2024:488, paragraph 27 and the case-law cited).

42 However, provided that an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his or her appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose. Furthermore, an appellant is entitled to lodge an appeal relying on grounds which arise from the judgment under appeal and seek to criticise, in law, its correctness (judgment of 11 June 2024, *Commission* v *Deutsche Telekom*, C-221/22 P, EU:C:2024:488, paragraphs 28 and 29 and the case-law cited).

43 In the present situation – contrary to what the ECB alleges, moreover, without providing further detail – the appellants set out precisely the challenged elements of the judgment under appeal and the reasons why

that judgment is, according to them, vitiated by errors of law, and do not therefore merely repeat the arguments that they put forward before the General Court.

44 The second plea of inadmissibility raised by the ECB must therefore also be rejected.

B. Substance

45 In support of their appeals, worded almost identically, the appellants raise 11 grounds alleging, respectively, for the first to sixth grounds, errors of law made by the General Court in its assessment of the decision at issue; for the seventh and eighth grounds, errors of law vitiating the General Court's assessment of the lawfulness of the procedure for adopting that decision and, for the ninth, tenth and eleventh grounds, errors of law made by the General Court in declaring that certain pleas in law put before it and part of the documents produced before it were inadmissible.

1. The first ground of the appeals

(a) Admissibility

46 The ECB submits that the first grounds alleging, in essence, that the General Court was wrong to find that the appellants had acquired a qualifying holding in Banca Mediolanum in 2016, are inadmissible, as they seek to call into question an assessment of a fact by the General Court and the classification of that fact in the light of the applicable national law.

47 It is admittedly apparent from settled case-law that the assessment of facts and evidence does not constitute, save in the case of their distortion, a question of law subject, as such, to review by the Court in the context of an appeal (judgment of 28 September 2023, *Changmao Biochemical Engineering* v *Commission*, C-123/21 P, EU:C:2023:708, paragraph 121 and the case-law cited). It is also not disputed that, subject to the same proviso, the Court similarly does not have jurisdiction to rule on the classification of the facts in the light of national law involving an interpretation of that law (judgment of 18 January 2024, *Jenkinson* v *Council and Others*, C-46/22 P, EU:C:2024:50, paragraph 107 and the case-law cited).

48 However, as the General Court was correct to observe in paragraph 49 of the judgment under appeal, the concept of acquisition of a qualifying holding in a credit institution is an autonomous concept of EU law. This is apparent from the fact that neither the definition of 'qualifying holding' in point 36 of Article 4(1) of Regulation No 575/2013, nor Article 15 of the SSM Regulation nor Article 22 of the CRD IV Directive laying down the mechanism for reviewing the acquisition of such a holding contain a reference to national law. This is also apparent from the objective pursued by the EU legislature, as follows from, inter alia, recital 11 and Article 1 of the SSM Regulation, to establish harmonised prudential oversight of the financial system, particularly, as set out in recital 22 of that regulation, significant – that is, 'qualifying' – holdings in credit institutions.

49 Consequently, the General Court's finding that the appellants acquired a qualifying holding in Banca Mediolanum in 2016 is not a classification of that fact in the light of the applicable national law or a factual assessment, but a classification of that fact in the light of a concept of EU law as interpreted by the General Court.

50 The Court has jurisdiction in appeals not only to review the General Court's interpretation of a concept of EU law such as the concept of 'qualifying holding' within the meaning of the CRD IV Directive and the classification by that court of a transaction in the light of that concept, but also, having regard to the case-law referred to in paragraph 47 of the present judgment, to ascertain whether the General Court has distorted the clear sense of the facts or evidence underlying that classification, as the appellants, moreover, submit on several occasions in the first grounds of the appeals.

51 The plea of inadmissibility raised by the ECB must consequently be rejected.

(b) Substance

(1) Arguments of the parties

52 By the first part of their first grounds of appeal, the appellants submit that the General Court should have found that the authorisation procedure could not be initiated, given that it had found, in paragraph 81 of the judgment under appeal, that Fininvest and, through that company, Mr S. Berlusconi, exercised joint control over Banca Mediolanum through a shareholders' agreement concluded with Fin. Prog. Italia.

53 By the second part of their first grounds, the appellants submit that, by considering that Fininvest's ownership of 30.16% of Banca Mediolanum had been reduced to a holding of 9.99% by the decision of the Bank of Italy of 7 October 2014 and was converted again into a qualifying holding following the judgment of the Consiglio di Stato (Council of State) of 3 March 2016, the General Court vitiated the judgment under appeal by distortion of the facts and several errors of law.

54 The appellants claim that, first, the General Court was wrong to hold, in paragraph 72 of the judgment under appeal, that the decision of the Bank of Italy of 7 October 2014 had reduced Fininvest's qualifying holding in Banca Mediolanum from 30.16% to 9.99%. According to the appellants, although that qualifying holding of 30.16% was subject temporarily to an order for sale and a simultaneous prohibition on exercising voting rights, it remained a qualifying holding.

55 Regarding the order for sale, it is clear that, until the sale took place, that order would not alter the size of Fininvest's qualifying holding. However, that sale never took place.

56 As for the voting rights, the limitation thereof also did not affect the appellants' ownership of a qualifying holding in Banca Mediolanum.

57 Second, according to the appellants, that first error led the General Court to make a second error of law in paragraph 73 of the judgment under appeal. Although, after the decision of the Bank of Italy of 7 October 2014 and until the time of the merger by absorption of Mediolanum by Banca Mediolanum, Fininvest owned a qualifying holding of 30.16% in Mediolanum, Fininvest was not able, according to the appellants, to become the direct owner of only 9.99% of the shares in Banca Mediolanum following that merger. On the contrary, Fininvest continued to own the same qualifying holding of 30.16%, which it previously owned and had never sold.

58 Third, the appellants submit that, since the decision of the Bank of Italy of 7 October 2014 did not transform Fininvest's qualifying holding of 30.16% into a non-qualifying holding of 9.99% and since that merger left that holding unchanged, the General Court also erred in paragraph 76 of the judgment under appeal in

finding, by the effect of the judgment of the Consiglio di Stato (Council of State) of 3 March 2016, Fininvest had recovered a qualifying holding of 30.16% in Banca Mediolanum. That judgment had no effect on the size of the shareholding. In any event, a judgment annulling an unlawful decision cannot contain an act of appropriation. According to the appellants, the judgment of the Consiglio di Stato (Council of State) of 3 March 2016 did not therefore create any rights, but merely annulled the order for sale.

59 By the third part of their first grounds, the appellants submit that the General Court unlawfully substituted its own reasoning for that of the author of the decision at issue, as follows from the arguments set out below.

60 By the fourth part of their first grounds, the appellants set out that, by ruling out the existence of an 'express reference' to national law and therefore rejecting the application of Italian law in order to interpret the concept of 'acquisition of a qualifying holding', the General Court infringed Article 4(3) of the SSM Regulation, Article 19 of decreto legislativo n. 385 – Testo unico delle leggi in materia bancaria e creditizia (Legislative Decree No 385 – Consolidated law on banking and credit matters) of 1 September 1993 (Ordinary Supplement to GURI No 230 of 30 September 1993), as amended by decreto legislativo n. 72 (Legislative Decree No 72) of 12 May 2015 ('the TUB') and the general principle of sincere cooperation enshrined in Article 4(3) TEU.

61 The appellants claim that that error of law vitiates the judgment under appeal because, if the General Court had applied Italian law, it could not have considered an 'alteration of the legal structure' of a holding to be an act of appropriation.

62 In addition, given that, in the decision at issue, the ECB had considered expressly that Italian law constituted the legal basis for defining the concept of 'acquisition of a qualifying holding', the General Court substituted its own reasoning for that of the author of the decision at issue and failed to observe the *inter partes* principle in that regard.

63 According to the fifth part of their first grounds, the interpretation of the concept of 'acquisition of a qualifying holding' as including the 'alteration of the legal structure' of a holding is not supported by the text of the CRD IV Directive, or the SSM Regulation, or ordinary language, or the objectives pursued by the legislation in question. The CRD IV Directive and the SSM Regulation establish a prior assessment of the quality of any person planning to acquire a holding in a credit institution. Any 'alteration of the legal structure' of a holding already owned does not result, as in the present case, in any change in ownership of that holding.

64 In addition, the new concept created by the General Court of 'alteration of the legal structure' of a holding is contrary to the principle of legal certainty, since that concept has no defined meaning in EU law and cannot be interpreted, according to the General Court, by reference to the law of the Member States.

65 Last, since the concept of 'acquisition of a qualifying holding' used by the General Court is not the same as that used in the decision at issue, the parties did not have the opportunity to put forward their arguments in relation to it.

66 By the sixth part of their first grounds, the appellants argue that the General Court infringed Article 22 of the CRD IV Directive and Article 22 of the TUB in holding that Fininvest had acquired a qualifying holding

subject to authorisation due to the fact that its indirect qualifying holding in Banca Mediolanum had become direct.

67 The legislation governing banking prudential supervision in EU law in accordance with Article 22(1) of the CRD IV Directive and national law in accordance with Article 22 of the TUB attaches no significance to the distinction established in the judgment under appeal between direct qualifying holding and indirect qualifying holding, given that that legislation is intended to trace the ultimate owner of a qualifying holding, irrespective of the presence of intermediaries.

68 In addition, the General Court's distinction between direct and indirect holding is completely irrelevant as far as Mr S. Berlusconi is concerned. He continued, both before and after the merger and the judgment of the Consiglio di Stato (Council of State) of 3 March 2016, to own an indirect holding in Banca Mediolanum.

69 The ECB submits that the first part of the first grounds of appeal is unfounded. The General Court, in paragraph 81 of the judgment under appeal, merely recalled a contextual element.

70 In response to the second part of the first grounds of appeal, the ECB argues that the appellants did not, in any event, own a qualifying holding following the decision of the Bank of Italy of 7 October 2014 and acquired that qualifying holding due to the merger and the judgment of the Consiglio di Stato (Council of State) of 3 March 2016. Moreover, on the basis of the applicable national law, the appellant's holding in Mediolanum did not constitute an indirect qualifying holding in Banca Mediolanum, as Mediolanum was not under the appellants' exclusive control.

71 Regarding the third part of the first grounds of appeal, the General Court did not substitute its own reasoning for that of the author of the decision at issue. The sole difference between the ECB's position and that of the General Court is the description of the context, which has no effect on the *ratio decidendi*.

72 According to the ECB, the fourth part of the first grounds of appeal is also unfounded. On the basis of a textual and contextual interpretation, the concept of 'acquisition' necessarily has an autonomous meaning in EU law, in the same way as the composite concept of 'acquisition of a qualifying holding'. In any event, if the General Court had applied the Italian legislation, it would also have found that the appellants had acquired a qualifying holding.

73 In response to the fifth part of the first grounds of appeal, the ECB submits that the General Court explained that, after the merger, Mediolanum was no longer interposed between the appellants and Banca Mediolanum and that the 'degree of indirect control of that holding' had therefore been altered. Consequently, by referring to the alteration of the 'legal structure' of the holding, the General Court's intention was to distinguish the relationship between the appellants and Banca Mediolanum through Mediolanum, on the one hand, and their relationship after Mediolanum was absorbed by Banca Mediolanum, on the other hand.

74 According to the ECB, the sixth part of the first grounds of appeal must also be rejected, because it is based on the incorrect premiss that Mr Berlusconi continued to own an indirect qualifying holding in Banca Mediolanum.

75 The European Commission is of the view that the first part of the first grounds of appeal, by which the appellants argue that the General Court was correct to hold that Mr S. Berlusconi and Fininvest already

exercised joint control over Banca Mediolanum before the merger due to a shareholders' agreement, must be rejected, as it is not a criticism of the judgment under appeal. In any event, that fact is irrelevant to a decision on whether the merger gave rise to a new holding subject to notification. The significant point is that the holding in Banca Mediolanum owned by Fininvest and Mr S. Berlusconi was never previously submitted for assessment by the supervisory authority, as set out in Annex 5 to the decision at issue.

76 According to the Commission, the complaints set out in the second part of the first grounds of appeal are ineffective, as they relate to reasons on which the operative part of the judgment under appeal is not based. They are, moreover, irrelevant. In the alternative, should the Court find that there has been distortion of the facts, it could decide to annul the judgment under appeal in so far as the General Court held that, following the decision of the Bank of Italy of 7 October 2014, the holding in Banca Mediolanum owned indirectly by the appellants was no longer a qualifying holding and, ruling on the action at first instance, reject the first plea of that action by holding that, after the merger and the judgment of the Consiglio di Stato (Council of State) of 3 March 2016, Fininvest and Mr S. Berlusconi owned, for the first time, a direct holding in Banca Mediolanum.

77 The Commission submits that the third part of the first grounds of appeal, alleging that the General Court substituted its own reasoning for that of the decision at issue regarding the interpretation of the concept of 'acquisition of a qualifying holding', has no basis in fact.

78 The fourth part of the first grounds of appeal confuses, in the Commission's view, two distinct issues: first, that of the law that the ECB was required to apply, that is, in accordance with Article 4(3) of the SSM Regulation, 'apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives'; second, that of the interpretation of the concept of 'acquisition of a qualifying holding' within the meaning of Article 15 of the SSM Regulation.

79 The Commission submits that, according to the settled case-law recalled in paragraph 44 of the judgment under appeal, the terms of a provision of EU law which makes no express reference to the law of the Member States must be given an autonomous and uniform interpretation throughout the European Union. A mere reading of the provisions of the SSM Regulation and CRD IV Directive set out above confirm the correct observation in paragraph 45 of the judgment under appeal, that is, that those provisions do not contain any reference to the laws of the Member States. It follows that the concept of 'acquisition of a qualifying holding' is an autonomous concept of EU law, which must be interpreted in a uniform manner throughout the Member States.

80 Regarding the error in interpreting the concept of 'acquisition of a qualifying holding' allegedly made by the General Court, the appellants' complaints centre misleadingly on the use by the General Court of the expression 'alteration of the legal structure'. However, the General Court's reasoning, which is more structured and more precise, relates specifically to the transformation of an indirect qualifying holding into a direct qualifying holding, as follows from an objective reading of paragraphs 78 to 81 of the judgment under appeal. The complaint that the General Court's interpretation is contrary to the principle of legal certainty is therefore unfounded.

81 At most, it may be acknowledged that, in compliance with the principle of proportionality, the intra-group transactions carried out within the group of an existing shareholder, which do not result in an actual or substantive alteration of the direct or final shareholders of the financial institution, are exempt from the

notification obligation and review by the supervisory authority only on condition that at least one assessment has already been carried out before. The 2008 Joint Guidelines of the European supervisory authorities (CEBS/2008/214; CEIOPS 3L 3 19/08; CESR/08 543b) were drafted to that effect. In the present case, the holding in Banca Mediolanum owned by Fininvest and Mr S. Berlusconi was never assessed.

82 By the sixth part of the first grounds, the appellants challenge the distinction between direct holding and indirect holding, claiming that that distinction has no effect on the existence of a qualifying holding.

83 Admittedly, European and Italian legislation provides for review of acquisitions of qualifying holdings, both direct and indirect. However, that does not mean that the nature and manner of the holding are irrelevant. In accordance with Article 23(1) of the CRD IV Directive, the assessment is to have regard to, inter alia, the likely influence of the proposed acquirer and the soundness of the proposed acquisition, as those criteria may be affected by the nature and legal structure of the holding.

84 The fact that Mr S. Berlusconi's holding remained indirect is similarly irrelevant. The nature and legal structure therefore changed on account of the fact that Fininvest's holding became a direct holding.

(2) Findings of the Court

85 As a preliminary point, it must be borne in mind that the CRD IV Directive, which regulates the prudential supervision of credit institutions and investment firms, provides, inter alia, for review of the acquisition of qualifying holdings in credit institutions.

86 Point 36 of Article 4(1) of Regulation No 575/2013, to which point 33 of Article 3(1) of the CRD IV Directive refers, 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'.

87 Article 22(1) of the CRD IV Directive imposes on Member States to require 'any natural or legal person … who [has] taken a decision either to acquire, directly or indirectly, a qualifying holding in a credit institution or to further increase, directly or indirectly, such a qualifying holding in a credit institution … to notify the competent authorities [of that decision] in writing in advance of the acquisition'.

88 Article 15(2) of the SSM Regulation provides that the application for acquisition of a qualifying holding is to be assessed by the competent national authority, which is to forward a proposal for a decision to the ECB. The power to oppose the acquisition of a qualifying holding belongs to the ECB under Article 15(3) of that regulation.

89 Under Article 23(1) of the CRD IV Directive, an assessment of the suitability of the proposed acquirer and the financial soundness of the proposed acquisition must, in order to ensure the sound and prudent management of the credit institution concerned, have regard to several criteria, including 'the reputation of the proposed acquirer'.

90 The ECB, notified of the case by the Bank of Italy, opposed, by the decision at issue, the acquisition by Fininvest and Mr S. Berlusconi of a qualifying holding in Banca Mediolanum, on the ground that Mr S. Berlusconi did not satisfy the reputation criterion.

91 In their first plea at first instance, the appellants disputed that they had acquired a qualifying holding in Banca Mediolanum in 2016. The General Court rejected that plea for reasons challenged by the appellants by the first grounds of their appeals.

92 By the first grounds of their appeals, the appellants submit that the General Court erred in holding that they had acquired a qualifying holding in Banca Mediolanum in 2016.

93 By the second part of those first grounds, which it is appropriate to begin by examining, the appellants submit that, in holding in paragraphs 72 73 and 76 of the judgment under appeal that their holding in Banca Mediolanum had increased in 2016, the General Court distorted the clear sense of the facts of the dispute and made errors of law.

94 As set out in paragraph 47 of the present judgment, the General Court has exclusive jurisdiction to find and appraise facts. The assessment of those facts does not therefore constitute, save in the case of their distortion, a question of law subject, as such, to review by the Court of Justice in the context of an appeal. Distortion must be obvious from the documents in the Court's file, without there being any need to carry out a new assessment of the facts (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraphs 104 and 105 and the case-law cited).

95 The General Court considered, in paragraph 72 of the judgment under appeal, that, following the decision of the Bank of Italy of 7 October 2014 by which it ordered the appellants to sell their shares in Mediolanum in excess of 9.99% and suspended their voting rights attached to those shares, the appellants' indirect holding in Banca Mediolanum had been brought to 9.99% and, accordingly, the appellants had lost the qualifying holding that they had previously owned in that credit institution. In paragraph 73 of the judgment under appeal, the General Court considered, as a result, that, following the absorption of Mediolanum by Banca Mediolanum on 30 December 2015, Fininvest became the direct holder of only 9.99% of the shares in Banca Mediolanum. The General Court inferred in paragraph 76 of the judgment under appeal that the effect of the annulment of the decision of 7 October 2014 by the judgment of the Consiglio di Stato (Council of State) of 3 March 2016, Fininvest became the direct owner of 30.16% of the shares in Banca Mediolanum and had therefore acquired a qualifying holding.

96 However, the Court observes that the decision of the Bank of Italy of 7 October 2014 by which it ordered the sale of the appellants' shares in Mediolanum in excess of 9.99% did not, in itself, lead to the reduction of that holding. That decision provided that the sale had to take place within 30 months through a trust responsible for the sale. As observed by the Advocate General in point 43 of his Opinion, on the date of the annulment by the judgment of the Consiglio di Stato (Council of State) of 3 March 2016 of the decision of the Bank of Italy of 7 October 2014, the shares representing Fininvest's holding of 30.16% were still held by that company and had not yet been transferred to any buyer. As observed by the Advocate General in point 44 of his Opinion, the only effect of the decision of the Bank of Italy of 7 October 2014 until its annulment was to suspend the voting rights linked to the shares subject to the obligation to sell.

97 It follows that the General Court distorted the scope of the decision of the Bank of Italy of 7 October 2014.

98 Indeed, the General Court manifestly misinterpreted the scope of the decision of the Bank of Italy of 7 October 2014 by confusing its order to the appellants to sell their shares in Mediolanum in excess of 9.99% with the sale itself of those shares, which alone was capable of reducing their holding, while, on the date

of the annulment by the Consiglio di Stato (Council of State) of that decision, that order had not had any effect.

99 It follows that, as the appellants argue, the General Court's assessment of the facts in paragraph 72 of the judgment under appeal – that the decision of the Bank of Italy of 7 October 2014 had reduced the appellants' holding in Mediolanum to 9.99% – is vitiated by distortion.

100 Accordingly, the conclusions drawn by the General Court from that assessment in paragraphs 73, 76 and 77 of the judgment under appeal – that is, first, that Fininvest had become a direct owner of only 9.99% of the shares in Banca Mediolanum following the absorption of Mediolanum by Banca Mediolanum and, second, that the annulment of the decision of the Bank of Italy of 7 October 2014 by the judgment of the Consiglio di Stato (Council of State) of 3 March 2016 resulted in it re-acquiring a qualifying holding of 30.16% in Banca Mediolanum – are also vitiated by distortion.

101 The General Court's assessment of the scope of the judgment of the Consiglio di Stato (Council of State) of 3 March 2016 set out in paragraph 76 of the judgment under appeal is, in addition, vitiated by an error of law. Irrespective of the scope of the decision of the Bank of Italy of 7 October 2014, the annulment of that decision by the judgment of the Consiglio di Stato (Council of State) of 3 March 2016 had the effect, as submitted by the appellants, of placing them in the same position as before that decision, that is, as acknowledged by the General Court itself in paragraph 71 of the judgment under appeal, that of holding a qualifying holding in Banca Mediolanum, not to result in them acquiring such a holding.

102 It follows from the foregoing that the appellants' argument that the General Court distorted the facts of the dispute and erred in law by ruling that their holding in Banca Mediolanum had increased following the judgment of the Consiglio di Stato (Council of State) of 3 March 2016 is well founded.

103 The second part of the first grounds of appeal must therefore be upheld.

104 By the fifth and sixth parts of the first grounds of appeal, which must next be examined together, the appellants argue that, in paragraphs 75 to 81 of the judgment under appeal, the General Court interpreted incorrectly the concept of 'acquisition of a qualifying holding', finding that such an acquisition could result from the alteration alone of the legal structure of a qualifying holding, the transformation of an indirect qualifying holding into a direct qualifying holding in particular.

105 It is appropriate to observe from the outset, as did the Advocate General in point 61 of his Opinion, that the General Court's interpretation referred to in the preceding paragraph is not in any way supported by the text of the CRD IV Directive or in that of the SSM Regulation.

106 Regarding, in particular, the direct or indirect nature of the qualifying holding subject to the acquisition, Article 22(1) of the CRD IV Directive sets out expressly that it is irrelevant whether the holding is acquired 'directly or indirectly'.

107 It is apparent more generally from point 36 of Article 4(1) of Regulation No 575/2013 that the legal structure of the qualifying holding is irrelevant; that point defines a qualifying holding, in an alternative manner, 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'.

108 Accordingly, it is not the legal structure of a holding – in particular, whether it is direct or indirect – which determines the existence of a qualifying holding, but, as observed by the Advocate General in essence in point 73 of his Opinion, whether that holding makes it possible to attain a particular level of control or influence over the credit institution.

109 That interpretation is borne out by the objective pursued by the EU legislature in establishing the supervision of the acquisition of qualifying holdings in credit establishments; the purpose of that supervision is, according to Article 23(1) of the CRD IV Directive, to 'ensure the sound and prudent management of the credit institution in which an acquisition is proposed, … having regard to the likely influence of the proposed acquirer on that … institution'.

110 Consequently, in holding, in paragraph 80 of the judgment under appeal, that the alteration of the legal structure of the qualifying holding could be regarded as an acquisition of such a holding, even if the quantum of that holding had not been altered, the General Court erred in law.

111 Accordingly, the General Court erred in holding, in paragraphs 75 to 81 of the judgment under appeal, that the fact, first, that, following the absorption of Mediolanum by Banca Mediolanum, Fininvest's holding in Banca Mediolanum, which was previously indirect, became direct and, second, that Mr S. Berlusconi's indirect holding in Banca Mediolanum, previously through Fininvest and Mediolanum, became indirect through Fininvest alone made it possible to establish the acquisition by the appellants of a qualifying holding in Banca Mediolanum.

112 The fifth and sixth parts of the first grounds of appeal must therefore be upheld.

113 It is apparent from the foregoing that, without there being any need to rule on the other parts of the first grounds of appeal, those first grounds must be upheld.

2. The second grounds of the appeals

(a) Arguments of the parties

114 According to the appellants, although the General Court acknowledged that the CRD IV Directive does not have retroactive effect in paragraphs 95 to 99 of the judgment under appeal, the fact remains that, in paragraph 100 of that judgment, it applied that directive retroactively, since the General Court applied the directive to a qualifying holding owned by Fininvest and Mr S. Berlusconi since 1996.

115 The ECB and the Commission are of the view that the General Court did not apply the CRD IV Directive retroactively, because it found that, pursuant to the decision of the Bank of Italy of 7 October 2014, Mr S. Berlusconi no longer owned an indirect qualifying holding on the date on which the Single Supervisory Mechanism was established on the basis of the SSM Regulation and that he became the owner of such a holding only following the absorption of Mediolanum by Banca Mediolanum in 2015 and the delivery of the judgment of the Consiglio di Stato (Council of State) of 3 March 2016.

(b) Findings of the Court

116 It must be borne in mind that Article 22 of the CRD IV Directive provides that Member States are to require any person who has taken a decision to acquire, directly or indirectly, a qualifying holding in a credit

institution to notify the competent authorities of that decision, in writing and in advance of the acquisition, and, in accordance with Article 23 of that directive, that acquisition may be authorised only if that person satisfies the criteria listed in that article.

117 It follows from the foregoing, as observed, in essence, by the General Court in paragraph 98 of the judgment under appeal, that Articles 22 and 23 of the CRD IV Directive are applicable only to acquisitions of qualifying holdings subsequent to the entry into force of the provisions which the Member States are required to adopt under those articles, which is set at 31 December 2013 at the latest by Article 162 of that directive.

118 In the present case, the appellants submit, without being challenged, that they acquired a 30.16% holding in Banca Mediolanum in 1996, that is, a qualifying holding within the meaning of the CRD IV Directive. As is apparent from paragraphs 71 and 72 of the judgment under appeal, the General Court also acknowledged, moreover, that the appellants still owned such a holding on the date of the decision of the Bank of Italy of 7 October 2014.

119 It is apparent from paragraph 102 of the present judgment that, contrary to the General Court's finding, that decision did not alter the quantum of the appellants' holding in Banca Mediolanum.

120 Moreover, it is apparent from paragraphs 108 and 110 of the present judgment that the alteration of the legal structure of that holding following the absorption of Mediolanum by Banca Mediolanum had no influence on the appellants' ownership of a qualifying holding in Banca Mediolanum.

121 It follows that the appellants did not acquire a qualifying holding in Banca Mediolanum after the date of entry into force of the provisions transposing the CRD IV Directive, but merely retained such a holding that had been acquired previously.

122 It is apparent from paragraph 117 of the present judgment that Articles 22 and 23 of that directive, which have no retroactive effect, are not applicable to qualifying holdings acquired before that date. The appellants' argument that, by opposing ownership of the appellants' qualifying holding in Banca Mediolanum, the ECB's retroactive application of those articles was unlawful, is therefore well founded.

123 The General Court therefore erred in law in holding that the ECB had not applied those articles retroactively by opposing, in the decision at issue, the appellants' ownership of a qualifying holding in Banca Mediolanum.

124 It follows from all the foregoing that it is appropriate to uphold, in addition to the first grounds of appeal, the second grounds of appeal.

125 The judgment under appeal must therefore be set aside, without it being necessary to examine the other grounds of appeal.

VII. The procedure before the General Court

126 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice may, after setting aside a decision of the General Court, refer the case back to

the General Court for judgment or, where the state of the proceedings so permits, itself give final judgment in the matter.

127 In the present case, it is appropriate for the Court of Justice to give final judgment in the matter, as the state of the proceedings so permits.

128 By the first plea of their action at first instance, the appellants dispute having acquired a qualifying holding in Banca Mediolanum in 2016.

129 It is apparent from paragraph 121 of the present judgment that the appellants did not acquire such a holding in Banca Mediolanum in 2016.

130 The ECB could not therefore lawfully oppose, by the decision at issue, an alleged acquisition by the appellants of a qualifying holding in Banca Mediolanum in 2016.

131 That first plea at first instance must, as a result, be upheld and the decision at issue must be annulled, without there being any need to examine the other pleas of the action at first instance.

VIII. Costs

132 Under Article 184(2) of the Rules of Procedure, where the appeal is well founded and the Court gives final judgment in the case, the Court is to make a decision as to the costs.

133 Under Article 138(1) of those rules, applicable to the procedure on appeal by reason of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

134 Since the appellants have applied for costs and the ECB has been unsuccessful, the ECB must be ordered to bear its own costs and to pay those incurred by the appellants, both at first instance and on appeal.

135 Under Article 184(4) of the Rules of Procedure, where the appeal has not been brought by an intervener at first instance, he or she may not be ordered to pay costs in the appeal proceedings unless he or she participated in the written or oral part of the proceedings before the Court of Justice. Where an intervener at first instance takes part in the proceedings, the Court may decide that he or she shall bear his or her own costs.

136 In the present case, since the Commission, intervener at first instance, participated in the procedure before the Court in support of the form of order sought by the ECB but did not bring the appeal, the Court rules that the Commission is to bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 11 May 2022, *Fininvest and Berlusconi* v *ECB* (T-913/16, EU:T:2022:279);**

2. **Annuls Decision ECB/SSM/2016 – 7LVZJ6XRIE7VNZ4UBX81/4 of the European Central Bank (ECB) of 25 October 2016;**

3. **Orders the European Central Bank (ECB) to bear its own costs and to pay those incurred by Finanziaria d'investimento Fininvest SpA (Fininvest), Mr Silvio Berlusconi and Ms Marina Elvira Berlusconi, Mr Pier Silvio Berlusconi, Ms Barbara Berlusconi, Ms Eleonora Berlusconi and Mr Luigi Berlusconi, legal heirs of Mr Silvio Berlusconi, relating to the proceedings at first instance and on appeal;**

4. **Orders the European Commission to bear its own costs.**