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BANKING CRISIS AND STATE AID. JUDGEMENT TERCAS: BRUSSELS VERSUS ITALY?

The European Union Tribunal has recently issued, in March 2019, a decision which unceremoniously rejects an entrenched interpretation of the European Commission. The latter, less than five years before, attempted to come with its own (and peculiar) legal characterisation of the intervention of the depositors' protection scheme in the corporate rescue of an Italian bank, "Tercas" as against the principles of the European Union. Not only does the contribution herein carry out an examination of the court decision at stake juxtaposed against the body of law of the State aids in the banking sector, but also it aims to discuss from a theoretical point of view the interaction between the second and third pillar of the Banking Union. Furthermore, and prospectively, the contribution identifies new solutions as regards the way, in a fully integrated pan-European system, the intervention of a depositors' guarantee scheme of a private nature shall be classified by the prevailing literature. Additionally, this State aid shall take into account the dynamics of the banking market. Finally, as the "Tercas" case derives from a private sector purchase before such a resolution tool was introduced by Directive 2014/59, the paper analyses the whole legal provisions pertaining to one of the "young brothers" (the purchase by a third party) of the most infamous resolution tool, the internal bank recapitalisation or bail-in.