Commission Decision (EU) 2019/1968 of 2 August 2019 on the measure SA.21445 - C42/2006 implemented by the Republic of Italy to remunerate Poste Italiane for the current accounts deposited with the Italian Treasury (notified under document C(2019) 5649) (Only the Italian text is authentic) (Text with EEA relevance)

COMMISSION DECISION (EU) 2019/1968

of 2 August 2019

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above[1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter dated 30 December 2005, the Associazione Bancaria Italiana ('ABI' or 'the complainant') submitted a complaint to the Commission regarding various measures benefiting the banking activities of Poste Italiane SpA ('Poste Italiane' or 'PI'). Notably, the Commission was informed that, pursuant to an agreement between the Italian Republic ('Italy') and PI, Italy would remunerate the funds collected in PI's postal current accounts and deposited with the Italian Treasury ('Treasury') with an interest rate of around 4 %, while PI would remunerate postal current accounts at a rate of around 1 % (the 'measure'). The spread between the deposit rate (i.e. the interest rate PI pays to the postal current account holders) and the loan rates (i.e. the interest rate PI receives from the Treasury for the funds deposited with the latter) would be higher than the relevant 'market' spread, thus constituting State aid in the view of the complainant.

(2) By letter dated 7 February 2006, the Commission submitted a series of questions to Italy relating to the remunerations paid on postal current accounts. Italy replied to those questions in a letter dated 21 April 2006. A meeting with Italy and PI took place on 30 March 2006.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2019/1968. (See end of Document for details)*

(3) By letter dated 26 September 2006, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 108(3) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the measure. The Commission invited interested parties to submit their comments on the measure.[(2)]

(4) By decision of 16 July 2008[(3)] ('the 2008 Decision'), the Commission concluded that the remuneration granted by Italy amounted to State aid that is incompatible with the internal market, and ordered its immediate recovery.

(5) On 4 December 2008, PI lodged an action before the General Court seeking the annulment of the 2008 Decision.

(6) By ruling of 13 September 2013 in case T-525/08[(4)], the General Court annulled the 2008 Decision ('the 2013 ruling').

(7) On 30 October 2014, a call for tender was published on the Commission's website[(5)] to carry out a report analysing and comparing the yields of possible investments of the funds collected by PI through the offer of postal current accounts for the period 2005-2007.

(8) On 19 December 2014, the contract was awarded to the University of Perugia. The report was concluded in November 2015.

2. DETAILED DESCRIPTION OF THE MEASURE AND THE BENEFICIARY

2.1. Poste Italiane

(9) PI is the universal postal service provider in Italy, which fulfils a service of general economic interest, i.e. the universal postal service obligation[(6)], according to the second Postal Directive[(7)] and the regulations on the universal postal service. Financial services are presently not included within the remit of the service of general economic interest PI is entrusted with.

(10) Besides providing core postal services, PI offers integrated products, as well as communication, logistic and financial services all over Italy.

(11) PI's banking activities are operated through a fully integrated division called BancoPosta.

(12) Between 2005 and 2007, PI's main shareholder was Italy with a 65 % stake while Cassa Depositi e Prestiti ('CDP') was PI's minority shareholder with a 35 % stake. CDP was part of the Public Administration until it was transformed into a limited company in late 2003. Since 2003, even with the transfer of 30 % of CDPs share capital to 65 banking foundations[(8)], CDP remains under the control of Italy. PI was also under the control of Italy at the time the measure was implemented.

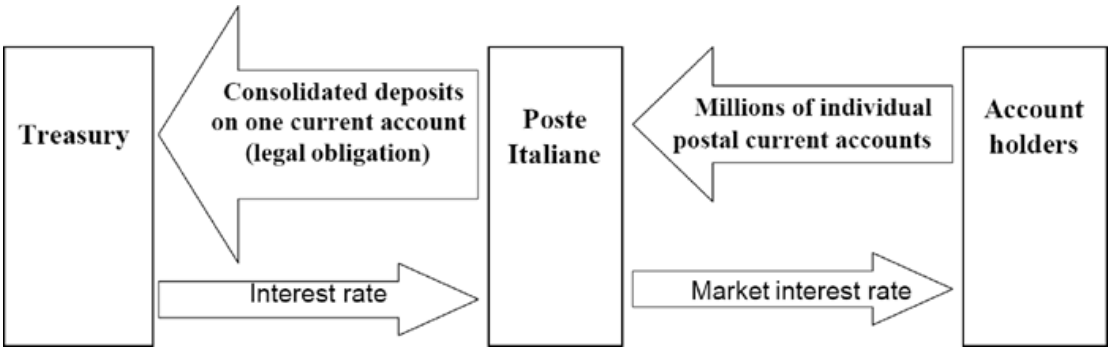
2.2. The measure

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(13) The measure under assessment concerns the remuneration of the funds Poste Italiane collected on postal current accounts and deposited with the Treasury in the three years 2005-2007.

(14) The obligation to deposit funds with the Treasury ('the Obligation')[9] was laid down in Law No 266 of 23 December 2005[10] ('the 2005 Law'), while the remuneration was granted by means of a convention between Italy and PI, adopted on 23 February 2006 ('the Convention').

(15) Following a decree on 5 December 2003[11], the relationship between PI and the Treasury can be described by the following chart:



(16) The 2005 Law provided that the financial interests paid to PI for the deposits with the Treasury were to be defined between Italy and PI according to market parameters.

(17) Following the 2005 Law, the Convention defined the concrete mechanisms for establishing the interest rates for a three-year period; it entered into force on 4 April 2006[12] with retroactive effect as of 1 January 2005. The yearly interest rate was essentially calculated as the weighted average of the yield of Italian Government bonds[13] at 30 years (80 %), and at 10 years (10 %), and of twelve-month Treasury bills[14] (10 %). The yearly rates of the government securities and of Treasury bonds used as reference in the Convention were obtained on the basis of the simple average of the 24 quotation values noted on the 1st and 15th of each month by MTS SpA (the company providing wholesale electronic trading of Italian Government bonds and other fixed term securities). Hence, the provision concerning the resetting of the parameters every 15 days determined the floating nature of the indexation. Furthermore, in case of significant changes in the rates curve (for instance a change in the relation between long and short term rates), PI could revise the calculation scheme. The Convention could be revoked by either party at the end of each year with 6-months prior notice.

(18) The interest rate in the years 2005, 2006 and 2007 amounted to 3,9 %, 4,25 % and 4,7 %, respectively.

(19) By virtue of Law No 296 of 27 December 2006 ('the 2006 Law')[15], Italy modified the 2005 Law. The 2006 Law defined a new investment framework: the requirement that PI deposit the funds collected on current postal accounts belonging to

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private customers (i.e. not belonging to the Public Administration) was abolished and those funds had to be invested by PI in Euro area Government bonds[16]. Pursuant to the 2006 Law, the new investment framework was gradually implemented during the course of 2007 and completed by the end of that year.

2.3. **The 2008 Decision**

(20) In the 2008 Decision, the Commission concluded that the measure under assessment, (i.e. the remuneration granted by the Treasury to PI under the Convention) amounted to State aid that is incompatible with the internal market, and ordered its immediate and effective recovery.

2.3.1. *Prudent private borrower*

(21) To establish the existence of an advantage within the meaning of Article 107(1) TFEU in the 2008 Decision, the Commission compared the interest rate paid by the Treasury to PI pursuant to the Convention ('the Convention's rate') and the interest rate that a prudent private borrower would have paid on the market in a similar situation ('rate granted to the prudent private borrower').

(22) As explained in recital 119 of the 2008 Decision, in defining the remuneration of deposits, a prudent private borrower would have essentially considered the following elements:

(a) the gross amount of the deposited funds;

(b) the stability of the deposited funds;

(c) the average duration/maturity and the changes in the deposited funds; and

(d) the financial risk borne.

(23) Regarding the gross amounts of the deposited funds, the Commission considered in the 2008 Decision that it totalled EUR 35 billion, which is a significant amount of money from a single lender. However, the Commission noted that the deposit by PI to the Treasury represents only 2,8 % of the outstanding amount of Government securities as of the end of 2005. In addition, the Italian Government bonds' issuance had been oversubscribed during that period. Therefore, there was no indication of a shortage of funds on the market and that PI' deposit was instrumental to overcome such a shortfall (recital 124 of the 2008 Decision).

(24) Regarding the stability of the deposited funds, the Commission considered that 10 % of the deposits on current postal accounts could be considered volatile and 90 % could be considered stable (recital 133 of the 2008 Decision).

(25) Regarding the average duration/maturity of the deposits, the Commission distinguished between active fund management, which would have been possible in the absence of the Convention, and passive fund management, resulting from the Obligation. A prudent private borrower should have expected that the Obligation would have been changed within a maximum of five years, and would have taken that into

account when determining the loan rate. In an active fund management framework, the Commission stated that the average maturity of the global amount of funds collected on postal accounts was slightly less than five years. Accordingly, a prudent private borrower should have based the market remuneration of the stable part of the deposits on the yield of a five-year bond (instead of the 10 or 30 years yield, as required by the Convention). Concerning the volatile part of the deposits, a prudent private borrower would have based the remuneration on three-month Treasury bills (instead of the 12-month Treasury bills, as required by the Convention).

(26) Regarding the financial risks related to the deposits from postal current accounts, the Commission noted that the liquidity risk was fully borne by the borrower (i.e. the Treasury) and not by PI. Under the Convention, if depositors withdrew their money from the postal current accounts, the Treasury would have to provide PI with the required funds for the same amount.

(27) The Commission concluded (recital 178 of the 2008 Decision) that the Convention rate exceeded the rate granted to the prudent private borrower by 1,09 % in 2005, 0,65 % in 2006 and 0,47 % in 2007. The Commission therefore concluded that the measure constituted State Aid within the meaning of Article 107(1) TFEU.

2.3.2. *Analyses of investment policies by PI in the absence of the Obligation*

(28) *Ad abundatiam*, the Commission looked, in its assessment, at the alternative investment possibilities suggested by Italy as available to PI in the absence of the Obligation, notably the investments made by PI with the funds collected through its insurance activities, Poste Vita SpA, and alternative active fund management strategies. In this context, the Commission analysed whether these alternative investments would have provided PI with similar or higher yields than the one set by the Convention.

(29) The Commission concluded that these alternative investments would have not provided PI with similar or higher yields than the one set by the Convention, from a risk/return perspective.

2.4. **Annulment of the 2008 Decision: the 2013 ruling**

(30) By means of the 2013 ruling, the General Court annulled the 2008 Decision.

(31) The General Court held that the existence of a positive difference between the Convention's rate and the rate granted to the prudent private borrower was not sufficient to demonstrate an advantage for PI.

(32) The General Court observed that the rate granted to the prudent private borrower had been estimated by the Commission based on the four parameters described in recital 22 of the present decision. Under these circumstances, the General Court concluded that the rate granted to the prudent private borrower did not constitute a market rate[17].

(33) The General Court noted that even if the rate granted to the prudent private borrower was not at the level of the market rate, PI would benefit from an advantage