

The Relaunch of Privatizations in Italy Amid Public Debt

Reduction and GDP Growth

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Abstract: Between 2012 and 2016, while the financial crisis was unfolding its effects in Italy and globally, several divestments of Italian State-owned companies were carried out, leading observers to believe that a new season of privatizations — similar to the one carried out in the 1990s — had finally been launched.

However, after the initial considerable divestments announcing the completion of privatization of large public companies, the momentum faded away due to the strong Italian political instability combined with an international trend oriented to nationalism.

The sizeable privatizations launched in 2014-2016, which led to important results in terms of revenue and attraction of investments (including international ones), produced lights and shadows, mainly due to the lack of a long-term roadmap.

In this context, the only constant feature of any privatization strategy in Italy appears to be the feeble and fluctuating trend that — today just like yesterday — prevents the country from fully exploiting the potential implicit in the divestment of large State-owned companies.

Key words: privatization; GDP; public debt

JEL codes: H

1. The Launching of Privatizations in Italy

The privatization process involving state-owned companies in Italy, although delayed compared to other European countries (first and foremost the UK), left a mark due to the several positive systemic effects achieved: the extensive sales made, the re-launch of the Stock Exchange, and the recovery of (some) companies severely impacted by financial imbalances. Nonetheless, the measures deployed and their implementation over the time showed a few grey areas and some missed opportunities.

A significant data in this regard that the volume of sales deriving from the stepping-back of the Italian State from the market is only outperformed by the one registered in Japan and UK (S. Micossi, 2007)¹.

Several factors concurred to such an impressive privatization process: economic, industrial, as well as political ones — the latter often originating mutual contaminations.

From a financial standpoint, immediately prior to the first *tranche* of divestments, a situation of financial

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¹ Shows that this has become an international case study and an international reference.

distress emerged in some of the strategic companies of the manufacturing, such as IRI (*Istituto per la Ricostruzione Industriale*) and EFIM (*Ente partecipazioni e finanziamento industrie manifatturiere*), de facto on the brink of bankruptcy². In addition to the above was the situation of dramatic indebtedness (120% of GDP), of public finance, based on which public accounts were no longer sustainable.

At the beginning, law-makers aimed at recovering companies of pivotal importance, whose abidance by public law had led to an unsound management characterized by squandering and inefficiency, as well as “cash” needs targeting to the reduction of the public debt undermining the overall economic system.

In this delicate context, the Italian political and judicial situation at the beginning of the 90s played a fundamental role, with the investigations by the Public Prosecutor’s Office of Milan, unveiling corruption and bribes in companies with public stakes. The ensuing scandal involved almost the entire Italian political class, with its habit in managing public companies, based on the sharing-out of mandates and posts in boards of directors of top managers and representatives of political parties whose main objective was accessing illicit funding and managing their power. This situation, in the public opinion’s eye, generated a media-related connection between the squandering of public money, multilevel corruption and unlawful party funding, all to the detriment of State-owned companies and, ultimately, of the Italian tax-payers.

At the same time, the double digit inflation and the exit of the Lira from the European Monetary System (EMS) as well as the adoption of the Maastricht Treaty³ had, on the one hand, unveiled the frailty of the Italian financial policies and, on the other had, outlined the nucleus of the European single market abandoning protectionist practices adopted *utisingulatium* by the States in favour of a sounder and more competitive integrated system of economies within the global scenario.

The subsequent interventions envisaged to strengthen the Italian industrial and political fabric, still confined to the parochialism of bailouts, aids and incentives.

The Delegated Law no. 218 of 30 July 1990 (the so called Amato Law) and the subsequent Legislative Decree no. 356 of 20 November 1990, setting out a thorough reform of Italian public banks by entrusting the management of such institutes to Joint Stock Companies rather than public bodies, establishing foundations encompassing the activities not entirely business-related but having a public and social interest⁴. This measure

² G. AMATO, *Privatizzazioni, liberalizzazioni e concorrenza nel sistema produttivo italiano*, in ASTRID - Sviluppo o declino. Il ruolo delle istituzioni per la competitività del Paese, L. Torchia & F. Bassanini (Eds.), Passigli, 2005, stresses that “On July 17th already [...], the dissolution of Efim took place because it could not meet all its commitments. Efim was a governing body which had inherited countless semi-bankruptcies of private entities. For this reason it was not the object of the new rules implemented some days earlier”. Moreover, “Even public bodies turned into stock companies had numerous problems. The most difficult situation was that of Iri. On December 31st, 1991 its turnover accounted for almost 70,000 billion Italian Liras. After separating the shares owned by third parties, the net result was even negative and gross debts topped 52,000 billion Italian Liras, against a shareholders’ equity of about 34,000 billion Liras. Finally, the desperate need to privatise Iri derived by their need to balance their books and not to take their books to court”.

³ The Treaty was signed on February 7th, 1992 in Maastricht (the Netherlands) by the 12 member States of the then European Community. The Treaty established the political rules and the steps States needed to take to join the European Union. It came into force on November 1st, 1993. The three fundamental pillars at the basis of the Union were: the European Community (EC), comprising the EEC, the ECSC and the EAEC; the Common Foreign and Security Policy (CFSP); Police and Judicial Co-operation in Criminal Matters (JHA). The most relevant aspect concerned the basis of the Economic and Monetary Union (EMU), to come into force by 1999, through the creation of a single currency and of a European Central Bank (ECB).

⁴ Paragraph 1 of Article 2 of the so-called “Legge Amato”, later modified, stated: “To implement the provisions set forth in Article 1, the Government of the Italian Republic is delegated to issue norms aiming at: a) allowing public credit institutions to transfer their company, even in more steps, and to run residual activities. Allowing public credit institutions to transfer their company, even in more steps, and to run residual activities. In view of being transferred wholly or partially, stock companies, as per Article 1, can temporarily continue running the business of the transferor or of the transferee; b) ruling the conversion in stocks of the securities issued by the credit institutions, allowing for the convertibility of participation shares into ordinary shares, savings units into savings

aimed to favour the concentration among banking groups to “stir up the petrified forest of our too many and too small banks, to promote clusters making them more efficient and competitive”⁵. However the core provision launching the privatization process in Italy is undoubtedly represented by Decree Law no. 333 of 11 July 1992 subsequently converted by Law no. 359 of 8 August 1992, providing for the transformation of public companies other than banks (such as IRI, ENI, INA and ENEL) into joint-stock companies, conferring a stake thereof to the then Ministry of Treasury (presently, Ministry of Economy and Finance). Such measure had the two-fold beneficial effect to free the newly established companies from the blurred management of parties’ most influential representatives, as well as to perform a budgetary consolidation of public accounts by taking the governance of such companies away from electoral exchange logics. All this in a perspective of value creation for the shareholders attracted by the competitiveness of the products available in the market and supported by management efficiency.

The first significant operations were implemented in 1993, with the selling of Nuovo Pignone by Eni, the transfer by IRI of the holding company Italgel and the Cirillo Bertollo De Rica group, as well as the public offering of Credito Italiano.

Immediately afterwards, Law no.432 of 27 November 1993 was approved, establishing the Public Debt Amortisation Fund, to which channelling the proceeds from privatization and public debt reduction activities. the government also passed the Decree-Law no.332 of 13 April 1994, converted through Law no. 474 of 30 July 1994 (the so-called Dini Law) aiming at having a larger dissemination of private companies among the public sphere, as well as increasing Tender Offers to safeguard minority shareholders. In particular, the possibility to set a ceiling for the ownership of shares was introduced also for the relevant Group⁶, as well as the so-called special Tender

shares, and mixed units into savings shares. To do so, stock companies set forth in Article 1, even those which are not quoted on the Stock Exchange Market, can issue savings shares as per article 14 of the Italian decree-law number 95 of April 8th, 1974, modified and converted into Law number 216 of June 7th, 1974; if a company is not quoted on the Stock Exchange Market, the amount of savings shares issued during the conversion may not be increased. Terms and conditions of the exchange will need to be approved by the Ministry of the Treasury, after the advice of the Bank of Italy and the Italian Securities and Exchange Commission (CONSOB). The assemblies of the companies set forth in Article 1 can agree on further conversions of their savings shares into ordinary shares; c) governing the entities which transferred the whole company, as per article 1. In the full respect of the current regulations, the company bylaws should mention the management of bank and financial holdings, both direct and indirect, as the object of the entity, the company goal being inspired to that of the original entity. Bylaws should also establish the terms and conditions for acquiring and selling shareholdings. In particular selling shares of stock companies created after a transfer is only possible after approval by the Italian Interministerial Committee for Credit and Savings, in case the transferor loses control of the majority of the shares with a voting right in the ordinary assembly of the transferee. Bylaws can finally specify limitations to allocating the company profits with the aim of creating reserves needed to subscribe to capital increases; d) introducing norms to guarantee the direct or indirect control, by a public entity, of the majority of shares with a voting right in the ordinary assembly of stock companies set forth in article 1. Exceptionally, with the aim of strengthening the Italian credit system, its international presence and its capital assets, and to make it more competitive for the good of the country, a special authorizations system can allow for derogations to the abovementioned principle, by subordinating it to the relative operations: 1) when the bylaws of the credit institutions concerned allow for provisions preventing individuals or non-banking groups from acquiring dominant positions or positions undermining the independence of the credit institution; 2) after the advice of the Bank of Italy caring about the preliminary phase; 3) after approval by the Italian Council of Ministers, and communication to the competent parliamentary commissions; regulating the terms and conditions for selling shares with the aim of guaranteeing transparency and congruity, by applying the norms about public offering on market placement”.

⁵ G. Amato, *op.cit.*

⁶ The norm, later modified, states: “Other statutory provisions: 1. The companies operating in the fields of national defence and security, energy, transportation, communications, and other public services as well as banks and insurance companies, directly or indirectly controlled by the State or by public entities, local entities and economic institutions included, can establish a maximum number of held shares in their bylaws. For the companies operating in the fields of national defence and security, energy, transportation, communications, and other public services, individual shareholders, their family, their non-legally separated spouse, their minor children, and their reference group — by reference group it is meant an entity, even entities which are not a company, exercising their control over the shares, as well as subsidiaries, subsidiaries run by the holding company, all related companies — may not hold more than 5% of shares; this is also valid for individuals who, directly or indirectly, through subsidiaries, trust companies or

Offer applicable to privatization of non-listed companies through Public Offering⁷.

The Decree-Law 332/1994 introduced another significant measure, namely the power to include in the by-Laws of companies undergoing privatization some special powers — the so called golden share — that the Government could exercise although ceasing its control over such companies — in case they were operating in sectors of public interest including defence, transports, telecommunications and energy⁸.

Such golden share was not immediately understood by the system; the Court of Justice, in fact, at the beginning declared it in contrast with the provisions of the Treaty. As a matter of fact, such tool was conceived with the aim of rejecting any acquisition by “unwelcome” shareholders and to keep a say in company development projects.

This, however, showed a weakness of the golden share, because if the State decided to avail itself of such prerogative, it would inevitably affect the company value and its appeal for investors, intimidated by such a considerable risk. This was particularly true in a country like Italy, characterized by a strong and systemic political instability.

This probably strengthened the idea that, in order to divest the other assets to successfully achieve the annual debt reduction targets, it was necessary to convey to the markets the idea of a State not interested in fulfilling its industrial development through a decision of the former Ministry of Industry⁹. The above represented one of the main criticisms to the efficacy of the privatization process.

In 1994 the first *tranche* of IMI (Istituto mobiliare italiano) was placed on the market — the placement was then completed in 1996 — as well as of Banca Commerciale Italiana. The first *tranches* of INA and Acciai

third persons, are party to agreements related to exercising the voting rights, to transferring other companies' shares or QUOTE, or to any agreements set forth in paragraph 4, Article 10 of Law number 149 of February 18th, 1992, replacing Letter b), Paragraph 1, Article 7 of this decree related to third companies, in case such agreements concern at least 10% of QUOTE or shares with voting rights — in case of companies quoted on the Stock Exchange Market — or 20% in case of companies not quoted on the Stock Exchange Market; 2. With reference to shareholdings different from the ones held by the State, public entities or entities controlled by the State or public entities, they can hold more than 10% of shares provided that they do not exercise the voting rights or rights not relating to equity, pertaining to the shares exceeding the limit itself. Concerning shareholdings exceeding the limit before October 2nd, 1993, such provisions do not apply for a three-year period starting from the same date. 3. Statutory provisions introduced under Paragraph 1 of this Article and the other provisions introduced to guarantee the protection minority shareholders may not be modified for a three-year period starting from the date of registration of the relevant resolutions of their shareholders' meetings. The provision establishing a limit to shareholdings is not valid in case the limit is exceeded as a result of a tender offer provided that the offeror comes to hold, as a result of the offer, shareholders not less than 75% of the equities with voting rights during the meetings concerning the appointment or removal of the directors or members of the governing board or of the supervisory board.”

⁷ The norm was abrogated by legislative decree number 58 of February 24th, 1998. However, the original version stated that: “Provisions about tender offers. (1) Without prejudice to the provisions of Paragraph 1, Article 3; and subject to the hypotheses of compulsory public tender offer set forth in Law number 149 of February 18th, 1992, the contribution to any voting syndicate agreement or consultation agreement within two years from the Public Offering of Shares, as inferable from concerted behaviour, as per this decree and acquired by participants, both contextually and non contextually, starting from the official communication by the holder of the disposal, triggers the obligation to make a public tender offer, in case the purchased shares allow for a majority of voting rights to be exercised during the ordinary assembly or for influencing decisions within the same assembly. (2) In order to define the occurrence of the obligation of a public offer tender set forth in Paragraph 1, all shares included in the agreement are considered, regardless the way they are acquired. The public tender offer concerns a number of shares equal to those contextually or non-contextually acquired included in the agreement. (3) The public tender offer set forth in this article may be set at the price established by the Italian Securities and Exchange Commission which will consider, in particular, the weighted average prices of the contextually or non-contextually purchased shares included in the agreement, and the average of the five higher market prices recorded after the placement of the Public Offering of Shares. All parties to the agreement are severally obliged to the Public Tender Offer. (4) The Italian Securities and Exchange Commission, with its own regulations to be published in the national Official Journal, establishes the terms and conditions for the public tender offer, which, for matters not expressly provided for in this article, is subject to the provisions stated in Chapter 2 of the Law number 149 of February 18th, 1992.”

⁸ For more detailed information about *golden shares*, see C. SAN MAURO, *I poteri speciali del Governo dei confronti delle società che operano nei settori strategici: dalla golden share ai golden powers*, in Foro amm., Anno II, Fasc. 11, Giuffrè, 2015.

Speciali Terni were sold. In the subsequent year, the first *tranches* of ENI was sold; ENI had started in 1992 a pathway successfully achieving company recovery and restructuring objectives.

As a completion of the above-mentioned regulatory framework, the Parliament approved Law no. 481 of 14 September 1995 “Rules for the competition and the regulation of public utility services. Establishment of the public utility services Authority”, which introduced an important novelty, i.e. the regulators of strategic sectors¹⁰. It represented the regulatory basis allowing the setting up of independent administrative Authorities — administrations endowed with technical legitimacy and independent from the power of political influence — holding advocacy power in matters including telecommunications, energy sources and water supply.

This laid the basis for the selling of Telecom Italia and (partly) Enel in 1997 and 1999, respectively. The main objective for the establishment of such Authorities was to provide the savers investing in privatized companies in regulated sectors with a first regulatory framework; Authorities were therefore the subjects guaranteeing stable regulatory frameworks taking into account market competition, quality of services provided, and consumers protection.

The services sector, however, despite of the privatization former monopolistic enterprises and the strong momentum towards the creation of a European open market, registered an uneven trend and not always satisfactory results.

In this context, in fact, the suspicion is that privatizations only produced a “cash-profit” as an end in itself, without adequately favouring market competitiveness and liberalization. It was often stated¹¹ that the error made by Italy was the decision of privatizing before liberalizing, as this would have fostered an anti-competition synergy between the Ministry of Economy and former monopolists, to the extent to which the former was entering into alliances with the latter in order to hinder further steps in terms of market opening, thus avoiding a value decrease of the public companies sold and over which it kept special powers.

All this considering that in several economic frameworks the infrastructure needed to provide services cannot be duplicated, and therefore the only form of “true” competition regards the way to access it and the related costs.

The privatization process launched in the '90s also led to the enactment of the “Consolidated Act on banking and credit provisions” (Legislative Decree no.385 of 1 September 1993) which transposed the guidelines of the

⁹ In this sense, G. AMATO, *op cit.*

¹⁰ Article 1 of Law number 481 of 1995 states: “1. Provisions in this Law aim at guaranteeing the promotion of competitiveness and effectiveness of public utilities, hereinafter called “services”, as well as adequate quality levels in providing such services while making sure they are cheap and remunerative, but also usable and homogeneously spread throughout the national territory. At the same time, the tariff system must be known, transparent, and based on previously defined criteria, thus protecting the interests of users and consumers in full respect of Community legislation in the field and the guidance about general policy stated by the Government. The tariff system should also harmonise the economic and financial objectives of the service providers with general interest objectives in the social field as well as that of environmental protection and effective use of resources. 2. For the privatisation of public utilities, the Government defines criteria to privatise every single company and the related disposal modalities and passes them on to the Parliament so that the competent Parliamentary Commissions express their advice”.

¹¹ Gamato, *op.cit.* quotes the so-called *pricecap* stating that “by using it, the price will be established at a limited margin above the cost price, with the aim to stimulate the company to be more effective, thus reducing costs and increasing its margins. This tool is smart, but attention needs to be paid to defining the margin. If the aim is to facilitating consumers, the pricecap will be established too close to price costs and the company will not be stimulated (usually former monopolists) to invest (for example in maintaining and adapting the basic infrastructures) and new competitors will find it hard to compete. If the pricecap is established much above the price costs, the strongest company relaxes and competitors compete, but consumers need to pay for everybody. Moreover, the regulator may need to define the costs which are to be added to the price. If it does not do so, it is possible that this will lead to a great conflict with the regulated company. In Italy this happened when the Authority for Electricity decided not to ask consumers to pay for former (non remunerative) investments made by ENEL. This led to a conflict with the Treasury and ENEL, which wanted to protect the performance of the electricity company’s shares.”

previous privatization provisions, enshrining the principle that banks were an entrepreneurial activity *other* than the State and outside of its control.

The completion of State exit from the banking sector was finalized a few years later, after the transfer of BNL to the French Group BNP Paribas (1998) and with the privatization of Mediocredito Centrale (1999).

Probably, a faster privatization of the banking system was hindered by the friction between two different lines of thought: the one — expressed by the law-maker — oriented towards a diversification of investments by banking foundations taking them outside of the influence by institutes, and the other — promoted by the Bank of Italy — reluctant in allowing foreign capitals to be injected in Italian banks. As a result, banking foundations kept their power within the share capital untouched for a long time, with relevant repercussions in terms of limitations to competitiveness¹².

Outside of the banking sector, further significant transfers occurred with the sale of Aeroporti di Roma — started in 1997 and completed in 2000¹³, and tranches of Telecom Italia, Eni, ENEL and Autostrade, and as well the remaining part of IRI assets¹⁴¹⁵.

Net of any comments and remarks, however, the above-mentioned privatizations can be positively judged in light of part of their initial objectives.

Undoubtedly, the revenues resulting from these operations were more than considerable (11% of GDP in the reference period ¹⁶); nevertheless the withdrawal of the public hand allowed the recovery of companies in chronic crises, and the volume of trading strengthened the Stock Exchange that shifted from a capitalization equal to 10% of GDP at the beginning of the '90s, to 70% at the beginning of the 2000s, with a 400% increase¹⁷.

Privatizations suffered a significant setback in the 2000s due to the combined effect of the financial and economic crisis followed by the speculative bubble started from the United States and opposed by the Italian Governments in that particular historical period. Said governments — although with an eye kept balancing the accounts, rather than a true privatisation policy fostered the transfer of debts outside the perimeter of public administrations and towards *Cassa Depositi e Prestiti*. In this way, a mild form of return to the public control was performed¹⁸.

The data emerging during the mid-2000s — therefore at the end of a considerable and overall productive privatization effort — was the absence of a long-term industrial policy, based on the political will to achieve a further reduction of State control, as well as a better implementation of the efforts made.

¹² In this sense, S. Micossi, *op. cit.*

¹³ In particular, on July 1997, the privatisation of Aeroporti di Roma S.p.A. was initiated. 45% of its equities were placed through a public and a private tender offer, aimed at Italian and foreign institutional investors. The privatisation process ended in the year 2000 with the disposal of the shareholdings held by the State.

¹⁴ IRI, an economic public entity turned into a stock company on July 11th, 1992, was the object of a wide privatisation programme. On June 2000, IRI starts the clearance of its accounts and definitely stops its activities (December 1st, 2002, through incorporation of residual assets in Fintecna S.p.A.).

¹⁵ In chronological order, the companies which have been privatised are: the *Finsidera* companies starting from 1988; the *ILVA* companies starting from 1993; the *ERITECNA* companies starting from 1994. In 1992 it was decided to turn *IRI* into a stock company. In 1993, *IRI* withdrew from the control of *Credito Italiano*; in 1994 of *Banca Commerciale Italiana*; in 1997, of *Banca di Roma*. Between 1994 and 1996, *SME* started to be liquidated. In 1996, the company *DALMINE*, operating in the field of Syderurgy was transferred. In 1997, *Condotte*, *Italstrade* and *STET* were transferred. In 1999, the exchange public offer for *Telecom Italia* was finalised. In 1998 *Italia di Navigazione* and *Lloyd Triestino*. In 2000 the shareholdings of *Finmeccanica* and *COFIRI* were sold and, once the privatisation of *IRI* was over, *FIncantieri* and *Tirrenia* were disposed and the shares of *Alitalia* and *RAI* were transferred to the Italian Ministry of Economy and Finance.

¹⁶ Source, DPEF (economic and financial planning document) 2007-2011.

¹⁷ Sources, Ministry of the Treasury, Finance and Economic Planning, White Paper on privatisations, 2001.

¹⁸ Cf. Stefano Micossi, *op. cit.*

2. The Targets of the News Season of Privatization: Controlling Public Debt and Divestment Tranches on MEF's Investee Companies

As anticipated, since the 2000s, we have witnessed some sporadic divestments lacking the consistency that would make them fall into a unitary project with a defined horizon. In fact, on top of the sale of Ente Tabacchi Italiani¹⁹, only additional Enel²⁰ and Telecom²¹ shares were transferred, and little else²².

The process of privatizing Italian state-owned enterprises after the first phase of divestments has gathered momentum only in recent times.

Undoubtedly, the driver of this recovery has been the economic and financial crisis that has affected the global economy since 2008 and the Italian one since 2011. Once again this crisis has shed light on the fragility of the domestic economic system, highlighting the dramatic consequences of the presence of a pressing public debt, such as that regarding the Italian finances. In such a context, before the impending danger of the State's impossibility to live up to its spending commitments, we have witnessed a radical change in policies — whose content was imposed by the European Commission — since the appointment of a Government made up of technical profiles and party representatives (the so-called Monti Government).

Within the framework of the huge amount of stepstaken²³, the then ruling Government considered it appropriate to rationalize and restructure the state-owned holdings through the transfer to Cassa Depositi e Prestiti (hereinafter referred to as CDP) of Sace, Simest and Fintecna shares in the hands of the MEF. So, the Decree Law no. 95 of 6 July 2012, as amended by Law no. 135 of 7 August 2012, laying down *Urgent provisions for reviewing public spending with the invariance of services to citizens, as well as measures to strengthen the capital of banking sector companies*, triggered the start of this transfer.

However, these soft interventions addressed the State's portfolio companies, which, however, were not actually delivered to the market as they were entering what — as we will see below — can be defined as the 'clearing house' for 'hard' privatization (i.e., actual), i.e., CDP. In other words, the Government only formally privatized these undertakings as they were transferred to a company that, although it was not fully a subsidiary²⁴, has the Italian State as its controlling shareholder.

Therefore, it can be said that such a measure has successfully responded to the impelling need - at that time -

¹⁹ British American Tobacco (BAT) was transferred to the company incorporated under British law in 2003.

²⁰ Enel's Extraordinary Shareholders' Meeting, which was held on 29 April 2009 resolved upon a share capital increase, reserved for shareholder option, for a total equivalent value of up to 8 billion Euros, to support its own financial structure following the acquisition by Acciona of the further 25.01% share of Endesa, giving the Board of Directors the powers to determine the methods, ways, terms and conditions of the transaction.

²¹ On 8 April 2010, the Shareholders' Meeting of Telecom Italia Media S.p.A. approved a capital increase against contributions for 240 million Euros issuing ordinary shares with subscription rights to shareholders. At the same time, the MEF decided not to adhere to the transaction and to alienate both the right of first refusal and the remaining shareholding in the Company.

²² The MEF did not perform any divestment of directly held holdings during 2007. During 2008, a share with subscription rights in the capital increase of Finmeccanica was transferred. This operation generated a total of gross revenues equal to 16,971,301.80 Euros. In 2009, the transfer of subscription rights was carried out under the capital increase of ENEL and SEAT, which allowed for a total of gross revenues equal to 665,793,940.93 Euros. In 2010, the sale of the remaining shares in SEAT and Telecom Italia Media was completed, together with the subscription rights of the latter, which were granted to the Ministry of the Economy in the framework of the share capital increase. In addition, a holding in ENI in favour of Cassa Depositi e Prestiti was transferred, in exchange for holdings held by the same company in ENEL, Poste Italiane and STMicroelectronics Holding N.V., and a cash payment was made. The transactions carried out generated a total of gross revenues equal to 163,287,209.09 Euros. Lastly, in 2009 the MEF sold the holding of Tirrenia S.p.A. held indirectly through Fintecna.

²³ The most important reforms: the labour market reform, l. 28 June 2012, no. 92; the reform of the social security system, art.24, Legislative Decree of 6 December 2011, no. 201; the public spending review, Legislative Decree of 6 July 2012, no. 95.

²⁴ In CDP, the MEF currently holds 82.77% of the share capital.

to find resources to be allocated to the current spending.

In particular, in November 2012, CDP exercised the right of first refusal to purchase state-owned holdings in Fintecna S.p.A. (100%), Sace S.p.A. (100%) and Simest S.p.A. (76.005%), by paying the provisionally determined amount of over 5,422 billion Euros to the Italian Government Securities Amortization Fund. The same allocation was identified by the Decree of the President of the Council of Ministers of 19 December 2012 with reference to the additional 30% of the amount due by CDP to MEF upon the payment of the amount due for the whole operation, using the residual amount with the purpose of reducing the debts of the State, in line with the provisions of art.23-*bis* of Decree Law no. 95 of 6 July 2015, converted with amendments by Law no. 135 of 7 August 2012.

The transfer of the above-mentioned holdings resulted in an acquisition in the State's assets equal to approximately 9 billion Euros²⁵.

In addition, the 2.4 billion transfer to CDP of the State's holdings in Sace, Simest and Fintecna were allocated to pay the State's debts to suppliers²⁶.

Although the emergency context in which this operation was approved may have justified a more substantial transaction, such a timid intervention may be due to the fact that no powers had been granted by the electorate to the Government in office and, therefore, to the absence of an entity that could really take on the political responsibility for such decisions. Divesting state-owned undertakings operating in crucial industries requires a broad-based strategy that is not confined to contingent cash-flow needs, which, albeit pressing, can only be covered by a series of systemic measures such as making the labour market more efficient, reviewing public spending, reforming the Civil procedure, etc., and certainly not through privatization.

From this viewpoint, the 'purpose' powers granted by the President of the Republic and the forthcoming renewal of the parliamentary composition did not allow the then Monti Government to implement a substantial privatization strategy, and so some companies were divested through the so-called indirect control technique.

This again proves that privatization is a highly sensitive issue.

Another short period of stagnation and inactivity followed the electoral consultations, which resulted in a highly fragmented Parliament that caused great instability and, as a consequence, a long political-institutional stalemate with the appointment of a precarious coalition government (the so-called Letta Government)²⁷. This

²⁵ Equal to 8,782,500,000 Euros. See Report on privatizations, Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016.

²⁶ See Report on privatizations, Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016.

²⁷ It should be noted, however, that during the Letta I Government — because of the approval of the Prague Agreement of 27 July 1966 between Italy and Czechoslovakia on the definition of the pending financial relations, according to which the Italian State had become the holder of 19,606 Assicurazioni Generali's shares and 48 RAS's shares, and as a result of the company's matters involving the two insurance companies, for which on 30 June 2013 the Ministry of the Economy held 2,028,868 Generali Assicurazioni's shares, 290 Allianz's shares, and 28 Allianz Subalpina's shares, on a Deutsche Bank account, as well as approximately 7.9 million Euros of dividends relating to these stocks in the same bank — the Ministry of the Economy considered it appropriate to sell them. The sale of 2,028,868 Generali Assicurazioni's shares, which was made between 17 and 28 February 2014 at an average price of 16,541 Euros per share, together with the sale of 290 Allianz's shares, which finalized on 17 February 2014 at the average price of 129,60 Euros per share, generated a total of gross revenues equal to 33,596,278.26 Euros. Net of commissions worth 29,998.68 Euros payable to Deutsche Bank S.p.A., the proceeds, in the amount of 3,000,000 Euros, went to Chapter 4056 of the so-called State Budget Forecast, in order to provide resources for the payment of consultants for other privatization operations. The remaining 30,566,279.58 Euros went to Chapter 4055, for financing the Italian Government Securities Amortization Fund. On 17 February 2014, Deutsche Bank also paid 7,933,212.77 Euros, equal to the dividends payable to the Ministry of the Economy, on account of the years of ownership of the shares of the aforementioned insurance companies, which went to Budget Chapter 2970. (Source, Privatization Report, Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016).

Government, however, devised a broad privatization programme, which was disclosed upon the Update to the 2013 Economic and Financial Document (hereinafter referred to as DEF, i.e., the Italian short for Documento di economia e finanza), providing for a public debt reduction for the 2014-2017 period equal to 0.5% of GDP per year, resulting from privatization revenues and property divestment. To that effect, on 13 December 2013, the so-called Destinazione Italia plan was presented. It was about the first holding divestments: ENI (for shares exceeding 30%), STM, ENAV for direct investments, SACE, Fincantieri, CDP Reti, TAG (*Trans Austria Gasleitung*) and Grandi Stazioni/Cento Stazioni for indirect ones. The second divestment phase, to take place in 2014, provided for the transfer of minority shares of Poste as well as other Italian companies, with the opening of the share ownership to the employees.

The inherently precarious Letta Government, however, ruled the country for a few months only. The turning point in privatization happened later, when a new government was formed, followed by the growing leadership of the Majority Party²⁸, whose time horizon were the next political elections. This new leadership in the Italian political landscape had the political strength to use the topic of privatization as a long-term strategy.

In particular, the new Government firmly believed that privatizing would reduce public debt, cover unproductive spending, reduce government funding, and restore efficiency in the companies that would be privatized²⁹. This approach was therefore supported in the 2014 and 2015 DEFs, where the National Reform Programme (hereinafter referred to as NRP) that established, in line with the Stability Programme, the actions to be taken to achieve the goals of domestic growth, productivity, employment and sustainability outlined in the new Europe 2020 Strategy, confirmed the sale of the shares of ENEL, Poste italiane, Ferrovie dello Stato, ENAV and Grandi stazioni S.p.A.

Since 2014, therefore, there has been a number of significant sell off operations regarding companies directly controlled by MEF, according to what the European Commission has defined as an “ambitious privatization programme”³⁰.

First, the Government³¹ planned the sale of a substantial share in Poste Italiane S.p.A., equal to 40% of the share capital.

This transaction was carried out in October and November 2015: the public offering (OPV)³² and the institutional offer were published between 12 and 22 October; whilst for the Gruppo Poste’s employees³³ —

²⁸ On 8 December 2013, Matteo Renzi was elected Secretary of the Democratic Party. By controlling the majority parliamentary groups, a motion of no confidence was adopted against the Government in office, and Mr. Renzi was given by the President of the Republic the mandate to form a new government, with the task of approving a new electoral law and reform the second part of the Constitution.

²⁹ Source, 2014 DEF, i.e. the Italian short for Documento di economia e finanza.

³⁰ European Commission, Commission report, Italy, Report drawn up in accordance with Article 126 (3) of the Treaty, Brussels, 22.2.2017, COM (2017) 106 final.

³¹ Decree of the President of the Council of Ministers of 16 May 2014.

³² Public offering (OPV) is an operation consisting in the placement on the market, by authorized companies, of existing shares, that is, no newly issued shares, at pre-established prices and quantities. The revenues generated from their sale are for the shareholders (in this case the Ministry of Economy and Finance) and not for the issuing company.

³³ The companies of the Poste Italiane Group are: Postevita S.p.A. (life insurance); Poste Assicura S.p.A. (insurance); SDS nuova sanità Srl; SDS System data software Srl; Bancoposta Fondi SGR (Savings management company); Postel S.p.A. (Document Management, Communication and E-procurement Services for Businesses and the Public Administration); Poste Tributi ScpA; Address software Srl; Postecom S.p.A. (digital search services); PatentiViaPosteScpA; Consorzio Postemotori; Conio Inc.; Postemobile S.p.A. (ITC services); Consorzio per i servizi di telefonia mobile ScpA; ItaliaCamp srl; MistralAir Srl (airline); Consorzio logistica pacchi ScpA; SDA Express Courier S.p.A. (Express courier); Kickpoint S.p.A.; UptimeS.p.A. (winding up); Poste Tutela S.p.A. (complementary security services); Europa Gestioni Immobiliari (valorisation of real estate assets and merger by incorporation of PosteEnergia, wholesale energy purchase and sale within the group); Anima holding S.p.A.; Banca del Mezzogiorno

would-be holders of a number of shares - the offer expired on 21 October.

This multistage transaction was made through a global offer, consisting of a public offering (OPV) in Italy (including a number of shares reserved to the employees of the Poste group³⁴), and an institutional offer for Italian and foreign³⁵ institutional³⁶ investors.

The global offer regarded approximately 34.68% of the share capital, and a minimum of 30% of the global bid was for the public offering (OPV). In addition, the public offering (OPV) provided for incentives for savers who would retain the stock acquired at the time of the offer for a minimum of 12 months (the so-called bonus shares).

Overall, this transaction filled the State's coffers with over 14 million Euros³⁷ (net value).

Upon completion of the sale, the MEF remained the majority shareholder in Poste S.p.A. with a controlled share capital of 64.70%. However, by the end of May 2016, the Italian State sold to CDP about 35% of its Poste's equity, with indirect control over the postal company.

Later in October 2014, the Government authorized the sale of a minority stake in ENEL S.p.A., establishing MEF monitoring of stock markets and the performance of the ENEL stock in order to identify the most appropriate time windows for the potential placement of 540,114,400 shares, equal to 5.74% of ENEL's share capital. Such placement should have been accomplished through a *Backstopped Accelerated Book building*³⁸

- Mediocredito centrale.

³⁴ The company's employees were reserved a tranche of two minimum lots of 50 shares each. In particular, the following was guaranteed:

- 10 free shares every 100 employees, only for to batches reserved to them;
- 5 free shares every 100 to the general public and employees of the Poste, for requests exceeding their reserved batches.

³⁵ The public offering of sale may be directed to savers in general or institutional investors. Institutional investors can be made this offer either by means of an 'institutional offer', intended for institutional investors in general, or through private placements, addressing a selection of identified investors. Where the recipients of the OPV offer are the savers, the Issuing company shall notify the Consob in advance, by sending the prospectus of the transaction, and carrying out the transaction in compliance with the requirements of the Consolidated Law on Finance (Legislative Decree no. 58/1998). As to the other two types of offer, instead, the company shall not necessarily comply with restrictive rules in terms of disclosure and transparency as it is assumed that the recipients in this case need less protection on account of their professionalism. According to the Consolidated Law on Finance, public placement between the general public and institutional investors can only be performed by authorized intermediaries, and so, if the recipients of the OPV offer are those categories, the company shall resort to a global coordinator (that is, an intermediary who will take care of the coordination and advice; this task may also be performed by Italian or foreign investment banks authorized under the Consolidate Banking Law, Legislative Decree no. 385/1993).

³⁶ An institutional investor is an economic operator investing significant financial resources in stocks and shares on a continuous basis. These resources often come from large savers (such as insurance companies, investment and business banks, investment funds, pension funds, hedge funds, savings management companies, public social security institutions).

³⁷ Equal to 14,171,072.02 Euros. See Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016.

³⁸ The Backstopped Accelerated Bookbuilding involves selling shares to institutional investors in a short time period, with little to no marketing (even less than one month). It is done very quickly (a few days at most), with reduced documentation costs. No prospectuses shall be submitted. Marketing is not required. It ensures maximum flexibility. Market exposure depends on the modes of implementation chosen.

The operation is preceded by the preparation of a list of banks (fourteen in the present case) which, at the time of the launch of the transaction, are required to submit their price bids for the short-term purchase and placement on the market of the share holdings offered.

The backstop clause ensures a minimum level of the sale price and leaves the market price risk to the banks in charge of the placement. However, the backstop level implies a discount compared to current prices, and the value of proceeds of the placements is usually the difference between the market sell price and the backstop itself. Sometimes the contracts entered into by the seller and the banks may provide for a placement fee, or the retrocession in terms of the seller of a share of the difference between the sale price on the market and the backstop (source, Privatization Report, Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016).

procedure addressing institutional investors³⁹.

The need for a monitoring period was due to the formally noted negative trend of financial markets by the end of 2014, and was thus aimed at avoiding an unsuccessful sale of ENEL's share capital. At the beginning of 2015, the positive performance of FTSE MIB and the quantitative easing (QE) tool adopted by the European Central Bank allowed for the ENEL's stock to be traded at 3.5/3.6 Euros at the end of 2014 up to 4 Euros in February 2015.

On 25 February 2015, the MEF started the placement process, inviting the short-listed banks to submit their bids. *Goldman Sachs International*, *Mediobanca-Banca di Credito Finanziario S.p.A.*, *Merrill Lynch International* and *Unicredit Bank AGF* had been selected as *Joint-Bookrunners*⁴⁰. The transfer transaction — equal to 5.74% of ENEL's share capital — was highly fruitful as it provided the Treasury coffers with a boost of 2,163,166,182 Euros, almost fully paid for financing the Government Securities Amortization Fund⁴¹.

At the end of this substantial privatization programme, the Government approved the placement of the first tranche of ENAV S.p.A.'s share capital, equal to a maximum of 49% of the share capital.

As in the case of Poste, the Government devised an operation to be carried out in a number of steps through a public offering (OPV) made to Italian savers, including the company's employees, and national and international institutional investors, or through direct negotiation to be carried out through competitive bidding procedures.

Similarly to what happened to Poste, the placement was made by combining a public offering (OPV) — including a number of shares reserved to ENAV's⁴² employees - and an institutional offer made to Italian and foreign institutional investors. Incentive schemes for savers to retain the stocks acquired for a minimum of 12 months (the so-called bonus share)⁴³ were also provided.

This transaction was carried out in July and August 2016 and generated a net revenue of 5,001,480.00 Euros for the Treasury, for a divested capital equal to 46.63% of the total.

At this point, it should be pointed out that in 2015 privatizations received a strong boost from the sale of shares in the stock market. For example, the ENEL transaction, in addition to the advantages described in terms of the amounts collected, despite the fact that the market was not particularly favourable at that time, did not have any adverse effects on the sale price, nor it caused disruption to the stock market prices, essentially because of the confidentiality and short-timing of the transaction handling⁴⁴.

The sale of Poste, then, is the most important European transaction carried out in 2015, and the demand for shares was more than three times the offer: many small savers, employees, and large institutional investors, including international ones, participated.

Also the divestment of part of ENAV's share capital achieved positive results, especially in the light of the

³⁹ Report on privatizations, Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016.

⁴⁰ The intermediary acting as a bookrunner collects all the purchase/subscription orders proposed by the institutional investors on the securities/stocks being offered. The activity of the bookrunner allows for estimating the supply and demand curves of the securities/stocks being offered, and thus it contributes to determining the placement price (Source,).

⁴¹ The geographical distribution of the volume of purchase orders: British institutional investors (51.2%), US investors (17.9%), Italian investors (6%).

⁴² The company's employees were reserved a tranche of two minimum lots of 500 shares each.

⁴³ In particular, the following was guaranteed:

- 10 free shares every 100 employees, only for the batches reserved to them;
- 5 free shares every 100 to the general public and employees of ENAV Group, for requests exceeding their reserved batches.

⁴⁴ Report on privatizations, Parliament Report on the Transactions for the Sale of Holdings in State-owned Companies (pursuant to art.13, paragraph 6, Law 474/1994), November 2016.

financial markets turbulence following the Brexit referendum. Also in this case the demand was higher than the bid — 8 times higher, with a strong commitment from institutional investors, including international ones, savers, and ENAV employees.

Indeed, privatizations, at least in the year 2015, delivered the expected results in terms of gross domestic product (GDP), since the privatization proceeds recorded were worth 0.4% of GDP⁴⁵.

However, this initial positive trend has not been steady over time, as already in 2016 the expected proceeds of the sales made were around 0.1% of GDP, so much so that the Government in office had to confirm the poor achievements of the privatization programme, specifying this in the Budget document. According to the European Commission, the disappointing GDP figures are due to the delays in some major privatization projects, such as that of Ferrovie dello Stato [State Railways], which was scheduled for 2016 and then postponed⁴⁶.

Nevertheless, the 2017 draft budgetary plan provides for privatization proceeds to be around 0.5% of GDP in the 2017-2018 two-year period, and 0.3% of GDP in 2019, probably meaning that the transactions that have already been carried out are to be implemented with further efforts aimed at strengthening them. It is no coincidence that the document says that the privatization of Ferrovie dello Stato, where both the privatization and divestment criteria of the shareholding held by the MEF are established by decree of the President of the Council of Ministers of 16 May 2016, is scheduled in 2017. In addition, the Government announced the intention to sell an additional shareholding of approximately 30% of the share capital of Poste Italiane S.p.A.⁴⁷.

In such a context, however, the European Commission sent to the Italian Government a letter highlighting that “overall, the high public debt remains a major source of vulnerability for the Italian economy, but the context of low interest rates [QE operation] has a strong attenuation effect, also supporting a gradual economic recovery. On the other hand, the reduction of the primary surplus, along with modest growth in real GDP and low inflation, prevents the reduction of the high debt/GDP ratio, and the privatization proceeds are lower than the government’s forecasts”⁴⁸.

3. The Role of Cassa Depositi e Prestiti: Clearing House for Actual Privatizations and Key Player of New Divestments

Cassa Depositi e Prestiti (hereinafter referred to as CDP) started separating from the Public Administration in 1983, when it ceased to be a General Directorate within the then Ministry of the Treasury, becoming an independent and separate structure. However, it was only in 2003, by virtue of Legislative decree no. 269 and MEF decree of 5 December 2003⁴⁹, when CDP became a S.p.A., i.e., a joint stock company, establishing in 2012

⁴⁵ European Commission, Commission report, Italy, Report drawn up in accordance with Article 126 (3) of the Treaty, Brussels, 22.2.2017, COM (2017) 106 final.

⁴⁶ European Commission, Commission report, Italy, Report drawn up in accordance with Article 126 (3) of the Treaty, Brussels, 22.2.2017, COM (2017) 106 final.

⁴⁷ Government Act no. 312 submitted to the Parliament, Draft Decree of the President of the Council of Ministers defining privatization criteria and the methods for divesting an additional share of the holding held by the Ministry of Economy and Finance in the share capital of Poste Italiane S.p.A. It was submitted to the Presidency of the Senate on 21 June 2016, and successfully concluded with favourable outcome with comments on 20 July 2016.

⁴⁸ European Commission, Commission report, Italy, Report drawn up in accordance with Article 126 (3) of the Treaty, Brussels, 22.2.2017, COM (2017) 106 final, pp.6 and 7.

⁴⁹ The Ministerial Decree of 5 December 2003, among other things, governed:

- the functions, assets and liabilities of CDP transferred to the Ministry of the Economy and Finance, specifying those assigned to the so-called ‘separate management’ of CDP;

the CDP Group, which is currently operating in the country's growth sector.

The reason for the transformation of CDP into a joint stock company basically lies in the type of functions performed, the greater agility of the privatization tool compared to the public form, and the reference markets⁵⁰.

The role of CDP in developing strategic sectors for the Italian economic growth and development has gradually increased over the years, so much so that in 2015 it deserved the recognition of the status of Istituto nazionale di promozione [National Institute for Promotion] under the European regulation on strategic investment from the Italian Parliament^{51,52}. In line with this status evolution, in 2017⁵³, CDP carried out a rebranding operation, launching a new corporate identity for all eight Group companies (Sace, Simest, CDP Equity, CDP

- the State's assets and holdings, also indirect ones, transferred to the CDP and assigned to the 'separate management', also by derogation from the applicable law. The Ministerial Decree referred to the subsequent Ministerial Decrees as to the possibility of further transfers;

- the ancillary commitments taken by the State;

- CDP's share capital (originally 3.5 billion Euros as established by the Ministerial Decree).

⁵⁰ See Chamber of Deputies, XVII legislature, CDP: main lines of action, no. 204/2, 12 October 2016.

⁵¹ Law of 28 December 2015, no. 208, the so-called Stability Law for 2016.

⁵² Servizio studi del Senato della Repubblica, A.S. no.2111, 2016 Stability Law: "Article 41 identifies Cassa depositi e prestiti S.p.A. as a national promotion institute under European strategic investment regulation and as a possible implementer of the financial instruments for the Structural Funds, enabling it to carry out the activities envisaged by that regulation, also using separate management resources. Paragraph 1 provides that, in order to pursue the goal of supporting the establishment of Investment Platforms herein under Eu Regulation no. 2015/1017 of 25 June 2015, the so-called European Fund for Strategic Investments (EFSI) Regulation, the financial operations of the investment platforms eligible for EFSI promoted by Cassa depositi e prestiti S.p.A. (hereinafter referred to also as CDP) may be assisted by the State guarantee. This state guarantee is qualified as follows: onerous, at first request, explicit, unconditional and irrevocable. "National banks or promotion institutes" are legal entities carrying out financial activities on a professional basis, to whom a Member State or an entity of a Member State — at central, regional or local level — gave the mandate to develop or promote, as defined in Article 2, no. 3 of EU Regulation 2015/1017 of 25 June 2015 on the EFSI, the European investment advisory hub and European investment project portal amending EU Regulation no. 1291/2013 and 1316/2013. According to COM Communication (2015) 361, the main economic reason for establishing a promotion bank lies in the fact that market failures can reduce investment and, consequently, slow down future growth, leading to inefficient economic levels, and in that an institute with a public mandate is better placed than private operators to remedy market failures. According to the document, Italy announced that it will participate in the EFSI project through Cassa Depositi e Prestiti for an amount of 8 billion Euros. The document sets out cooperation between national promotion banks and the EIB through co-investment agreements (investment platforms), which are structured to aggregate investment projects, reduce transaction and information costs, and more effectively allocate risk between the various investors. Investment platforms may be special purpose vehicles, managed accounts, co-financing agreements or agreements for sharing risk-based contracts or agreements established by other means through which entities channel a financial contribution to finance a number of investment projects.[...] Paragraph 5 assigns to CDP the status of a national promotion institute as defined in Article 2 (3) of Regulation (EU) no. 2015/1017 of 25 June 2015 on the European Fund for Strategic Investments (EFSI), as set out in COM Communication (2015) 361 of 22 July 2015 of the European Commission. Paragraph 6 enables CDP to carry out the activities of national promotion institutes provided for in Regulation (EU) No. 2015/1017, and to perform the tasks provided for in Regulation (EC) no. 1303/2013 and Regulation (EU, EURATOM) no. 966/2012. [...] Paragraph 7 authorizes CDP to use the separate management resources referred to in Article 5 (8) of Decree Law no. 269 of 30 September 2003 to contribute to the achievement of EFSI objectives, through the financing of investment platforms and individual projects in accordance with Regulation (EU) no. 2015/1017, in compliance with the EU state aid rules. Article 5, paragraph 8, of Decree-Law no. 269 of September 2003 established a separate system for accounting and organizational purposes, whose management is consistent with criteria on transparency and safeguarding economic stability. Separate management is responsible for holdings, the relevant connected and ancillary instrumental activities, assistance and advisory activities for CDP-funded entities.

CDP finances State, Regions, Local Authorities, Public Bodies, and Public Law Bodies, using repayable funds in the form of postal savings and savings certificates, assisted by the State guarantee and distributed through Poste italiane S.p.A. or its subsidiaries, and funds from the issuance of securities, borrowing and other financial transactions, which may be assisted by the State guarantee. Funds can also be used for any other public interest operation provided for by CDP S.p.A.'s Articles of Association, which is carried out for the same entities or promoted by the same entities, as well as with private entities for the execution of transactions in areas of general interest identified by Ministerial Decree, taking into account the economic and financial sustainability of each transaction. The operations carried out in the framework of international development cooperation activities may also be co-financed with European, multilateral or supranational financial institutions, within an annual limit established by a special agreement between the same CDP and the Ministry of the Economy and Finance [...]".

⁵³ On 28 February 2017.

Immobiliare [Real Estate], CDP Investimenti [Investments] Sgr, CDP Reti [Networks], and Fintecna), with the aim of developing new relationship strategies with both the territory and clients.

Moreover, considering its functions, CDP is not included in the scope of public administrations, for the purpose of defining the relevant public finance standards at European level⁵⁴.

The peculiarity of CDP is to be a MEF portfolio company, *rectius* controlled by MEF for 82.77% of the share capital, where almost the entire remaining share ownership is represented by bank foundations⁵⁵.

Precisely for this strategic role it has played, CDP has been the recipient of a large number of MEF's holdings in some undertakings involved in the privatization process because, through the transfer of shares to CDP, in the eyes of the several Governments that ruled Italy, there was — and there is — a twofold positive effect, namely making profits to meet public spending needs, while maintaining an indirect control over the shares sold.

In line with the foregoing, towards mid-2016⁵⁶, CDP resolved upon a capital increase, from 3,500,000,000 to 4,051,143,264 Euros, by virtue of the increase approved with the transfer of a MEF's shareholding equal to 35% of the share capital of Poste Italiane S.p.A. In this way, the ministerial shareholding in CDP moved from 80.1% to 82.77% of the share capital, and both the foundations with equity interests⁵⁷ and treasury shares⁵⁸ had a lower impact on the share capital.

In particular, MEF's decree dated 25 May 2016, which authorized the Treasury Department to transfer to CDP those shareholdings, established that the transfer was intended to strengthen CDP's property to carry out business operations of 3 billion Euros⁵⁹, and that the shareholding, albeit assigned to CDP's separate management, guaranteed MEF the power to carry out specific activities, including management.

⁵⁴ See Chamber of Deputies, XVII legislature, CDP: main lines of action, no. 204/2, 12 October 2016.

⁵⁵ Fondazione di Sardegna, 1.670; Fondazione Cassa di Risparmio di Asti, 0.083; Compagnia San Paolo, 1.609; Fondazione Cassa di Risparmio della Provincia dell'Aquila 0.083; Fondazione Cassa di Risparmio delle Province Lombarde, 1.558; Fondazione Cassa di Risparmio di Carpi 0.083; Fondazione Cassa di Risparmio di Torino, 1.500; Fondazione Cassa di Risparmio di Biella 0.083; Fondazione Cassa di Risparmio di Lucca, 0.852; Fondazione Cassa di Risparmio di Reggio Emilia - Pietro Manodori, 0.083; Fondazione Cassa di Risparmio di Trento e Rovereto 0.730; Fondazione Cassa di Risparmio di Teramo, 0.083; Fondazione Cassa di Risparmio di Cuneo, 0.741; Fondazione Cassa di Risparmio di Pesaro, 0.067; Fondazione Cassa di Risparmio di Firenze, 0.601; Fondazione Cassa di Risparmio di Mirandola, 0.033; Fondazione Cassa di Risparmio di Perugia, 0.601; Fondazione del Monte di Bologna e Ravenna 0.033; Fondazione Cassa di Risparmio di Padova e Rovigo, 0.599; Fondazione Cassa di Risparmio di Vercelli, 0.033; Fondazione di Venezia, 0.417; Fondazione Cassa di Risparmio della Provincia di Viterbo, CA.RI.VIT. 0.033; Fondazione Banca del Monte di Lombardia 0.417; Fondazione Banca del Monte di Lucca 0.033; Fondazione Cassa dei Risparmi di Forlì, 0.431; Fondazione Sicilia 0.033; Fondazione Pescaraabruzzo 0.042; Fondazione Cassa di Risparmio di Calabria e di Lucania 0.025; Fondazione Cassa di Risparmio di Genova e Imperia 0.371; Fondazione Banca del Monte "Domenico Siniscalco-Ceci" di Foggia 0.025; Fondazione Cassa di Risparmio di Alessandria 0.371; Fondazione Cassa di Risparmio di Fabriano e Cupramontana 0.033; Fondazione Cassa di Risparmio di Pistoia e Pescia 0.351; Fondazione Cassa di Risparmio di Saluzzo 0.033; Fondazione Agostino De Mari 0.275; Fondazione Cassa di Risparmio di Savigliano 0.017; Fondazione Cassa di Risparmio di Trieste 0.256; Fondazione Cassa di Risparmio di Fossano 0.017; Fondazione di Piacenza e Vigevano 0.250; Fondazione Cassa di Risparmio di Carrara 0.017; Fondazione Cassa di Risparmio di Ravenna 0.167; Fondazione Cassa di Risparmio di Fermo, 0.017; Fondazione Friuli 0.136; Fondazione Cassa di Risparmio di Orvieto 0.017; Istituto Banco di Napoli Fondazione 0.142; Fondazione Cassa di Risparmio e Banca del Monte di Lugo 0.017; Fondazione Cassa di Risparmio della Spezia, 0.109; Fondazione Cassa di Risparmio Salernitana 0.017; Fondazione Cassa di Risparmio di Macerata 0.100; Fondazione Cassa di Risparmio di Spoleto 0.017; Fondazione Cassa di Risparmio di Bolzano 0.089; Fondazione Cassa di Risparmio di Ferrara, 0.014; Fondazione Cassa di Risparmi di Livorno 0.089; Fondazione Banca del Monte e Cassa di Risparmio Faenza, 0.008; Fondazione Cassa di Risparmio di Gorizia 0.083; Fondazione Cassa di Risparmio di Bra, 0.005; Fondazione Cassa di Risparmio di Modena 0.149; Fondazione Banca del Monte di Rovigo, 0.002; Fondazione Cassa di Risparmio di Imola 0.086; Fondazione Cassa di Risparmio di Terni e Narni, 0.083.

⁵⁶ On 24 June 2016.

⁵⁷ From 18.4% to 15.93%.

⁵⁸ From 1.50% to 130%.

⁵⁹ According to the MEF Press Release dated 25 May 2016, this transaction would not have resulted in a mandatory takeover bid (TOB) pursuant to Article 106 of the Consolidated Law TUF, and it is specified that the MEF intends to place on the market the Poste's share it holds after the transfer operation to CDP, equal to 29.7% of the share capital.

In addition, in favour of such a significant transfer by Poste Italiane to CDP was also the consideration that CDP manages a substantial portion of the national savings, that is, postal savings (savings certificates and savings books)⁶⁰, which are its main source of revenue: since 2008, the potential for using postal savings has been broadened by public investment in programmes aimed at supporting the economy. In this industry, CDP, as a long-term financial operator, plays a key role, especially in supporting small and medium-sized enterprises⁶¹.

To further confirm the strategic role played by CDP, in 2011 the Government approved Legislative decree no. 34 providing for CDP to acquire holdings in companies of major national interest in terms of strategic operating segment, employment levels, turnover or impact on the country's economic-productive system, which are in a stable financial, capital and economic situation, and which are characterized by adequate profitability prospects, based on the requirements established by the MEF's decree⁶². Such holdings can also be acquired through corporate entities or investment funds in which CDP holds an interest, and, where the acquisition takes place using resources coming from postal collections, they shall be accounted for in the separate management⁶³.

In relation to the purposes described above, CDP operates through a Holding called Fondo Strategico Italiano S.p.A. (hereinafter referred to as FSI), established under Ministerial Decree of 3 May 2011, and whose controlling shareholder is CDP (77.7%), followed by Banca d'Italia (20%) and Fintecna (2.3%).

CDP serves as clearing house for actual privatizations also through FSI (for example, the agreement with ENI S.p.A. reached in 2015⁶⁴, which provided for FSI's entry into the share capital of the listed company Saipem S.p.A.).⁶⁵

⁶⁰ Postal savings means the collection of funds, with the obligation of repayment assisted by the State guarantee, made by Cassa depositi e prestiti through Poste Italiane. Fundraising is made through postal savings certificates and savings books. The funds are secured by the State by virtue of the service of general economic interest, and are in 'separate management' for accounting and administrative purposes.

⁶¹ See Chamber of Deputies, XVII legislature, CDP: main lines of action, no. 204/2, 12 October 2016.

⁶² The MEF Decree of 3 May 2011 laid down the criteria for the identification of companies of major national interest. The next Decree of the Ministry of Economy and Finance of 2 July 2014 intervened again on the subject, considering the need for investments in further areas, to broaden the range of sectors considered as of significant national interest, as well as to make the possibility of investments — also indirect ones — by CDP explicit. According to Ministerial Decree of 2 July 2014, capital companies operating in the fields of defence, security, infrastructure, transport, communications, energy, insurance and financial intermediation, research and high technological innovation, public services, tourism and hotels, agro-food and distribution, and cultural and artistic heritage management, are of major national interest. In addition, under the new Ministerial Decree, the companies that, although are not established in Italy, operate in the above-mentioned sectors (defence, security, infrastructure, transport, communications, energy, insurance and brokering, research and high technological innovation, public services, tourism-hotels, agro-food and distribution, cultural and artistic heritage management), and have subsidiaries or permanent organizations in their national territory with the following cumulative requirements in the national territory are of major national interest: (a) a net annual turnover of not less than 50 million Euros; (b) an average number of employees during the last financial year of not less than 250. In any case, these companies must have significant development prospects.

In addition to the above mentioned sectors, the companies with the following cumulative requirements are of significant national interest: (a) a net annual turnover of not less than 300 million Euros; (b) an average number of employees during the last financial year of not less than 250.

⁶³ See Chamber of Deputies, XVII legislature, CDP: main lines of action, no. 204/2, 12 October 2016.

⁶⁴ On 27 October 2015.

⁶⁵ Saipem is one of the world's leading service providers in the onshore and offshore oil industry. The company started operating in the 1950's. During the 1950's and 1960's, it gained expertise in laying onshore pipes, building installations and drilling, initially as an Eni division and later on a stand-alone basis, becoming autonomous in 1969. Saipem started performing offshore activities in the Mediterranean in the early 1960's, and reached the North Sea in 1972. The company started offering services outside the Eni Group in the early 1960's and has since gradually expanded its customer base, which today includes almost all oil giants and major oil companies, both private and state-owned ones, worldwide. Towards the end of the 1990's, when Saipem started carrying out activities in deep waters and developing countries, the company made an investment plan to match the increasingly challenging market conditions, adapting the capabilities of its naval vessels in terms of drilling, the development of deep-water reservoirs, laying pipes, leased Floating Production Storage and Offloading (FPSO), and underwater robotics. Saipem has recently completed its challenging investment program, which began in 2006 and is aimed at strengthening and expanding Seawater Perforation and

Therefore, the acquisition of holdings is part of CDP's⁶⁶ institutional activity, and this has undoubtedly favoured the role of CDP as "clearing house" or, to put in another way, the preliminary step to "actual" privatizations.

When it became a joint stock company in 2003, notwithstanding the possibility of subsequent transfers and contributions, the MEF transferred to CDP overriding state assets and holdings, namely, ENEL, ENI and Poste italiane's shares⁶⁷.

Then, as outlined above, Legislative decree no. 95 of 2012, granted CDP the right of first refusal to purchase 100% of the equity capital held by the State in Fintecna S.p.A. and Sace S.p.A., and 76% of the holdings in Simest S.p.A. In addition, in 2012, through CDP RETI — a CDP fully-owned subsidiary, ENI acquired a holding of approximately 30% in SNAM, whereas in 2014 the 29.9% holding in Terna was transferred by CDP to CDP Reti, and the share capital of CDP Reti was opened to third-party investors⁶⁸.

As to the efforts made in favour of CDP by the Government in office since 2014, it is also worth mentioning the transfer of the holdings of SGR Fondo italiano di investimento S.p.A. [Italian Investment Fund]. This company was established in 2010 by MEF, ABI, Confindustria, i.e., the Italian employers' federation, and banking institutions such as Banca MPS S.p.A., Banca Intesa San Paolo S.p.A., Istituto centrale delle Banche popolari and Banca Unicredit S.p.A., each holding a 12.5% share. The company's mission is to boost medium-sized enterprises to foster and support capitalization, aggregation, and greater competitiveness in international markets. To that effect, venture capital investments (of small and medium-sized companies operating in industry, trade and services) are made.

In the first half of 2016, the MEF transferred its 12.5% share in Fondo Italiano d'Investimento SGR to CDP, upon the payment of 1.7 million Euros.

Therefore, CDP has also played a major role in the privatization programme since 2014, not only as the recipient of the holdings sold by the MEF but also as a key player in terms of other transfers.

In particular, the Board of Directors of the company, on 30 July 2014, approved the sale of a 35% share of the share capital of CDP Reti S.p.A., for not less than 2,101 million Euros to be paid to *State Grid International Development Limited* (SGID)⁶⁹, a subsidiary fully by *State Grid Corporation of China*.

Building assets, as well as assets required in the framework of local content consolidation projects, in particular advanced vessels designed to meet the challenges that will bring hydrocarbon production and transportation in ultra-deep waters and borders. Saipem has been listed on the Milan Stock Exchange since 1984 (previously its was entirely owned by Eni). Source, http://www.saipem.com/sites/SAIPEM_it_IT/sottosezione/company/Storia.page.

⁶⁶ Art.5, paragraph 8, Legislative decree no. 269/2003.

⁶⁷ Art. 9, MEF Decree of 5 December 2003. Subsequent ministerial decrees have reorganized these shareholding ratios between MEF and CDP. It should be pointed out that the Italian Ministerial Decree of 30 November 2010, according to which in 2010 CDP sold to the MEF its holdings in ENEL (17.36%), Poste Italiane (35%), as well as in STMicroelectronics Holding NV (50%) and, as consideration, the MEF transferred to CDP its shareholding in ENI S.p.A. (16.38%). As a result of this transfer, CDP's share in ENI rose from 10% to 26.37%.

⁶⁸ See Chamber of Deputies, XVII legislature, CDP: main lines of action, no. 204/2, 12 October 2016.

⁶⁹ *State Grid Corporation of China, which was founded on 29 December 2002, is a state-controlled company*. It ranked seventh in the rankings of the world's 500 largest companies, 2014 Fortune Global 500, and is the world's largest utility. The company's mission is to provide safe, affordable, clean and sustainable electricity for the social and economic development of the country. Its core business is the construction and management of the energy network covering 26 Chinese provinces, autonomous regions and municipalities. State Grid operates in about 88% of the country's territory, has over 1,500,000 employees, and serves a population of over a billion people. SGID is a wholly-owned subsidiary of SGCC, and is the only vehicle to enter into operations and capital investments abroad on behalf of SGCC. SGID has already made investments in the Philippines, Brazil, Portugal, Australia and Hong Kong (source, Cassa depositi e prestiti, Release no. 49 of 30 July 2014, on CDP: the Board of Directors approves the sale of 35% of CDP Reti to the Group Chinese State Grid Corporation of China/CDP: the Board of Directors approves the disposal of a 35% stake in CDP Reti to the Chinese Group State Grid Corporation of China).

In particular, CDP Reti is a CDP fully-owned subsidiary holding 30% of the share capital of SNAM S.p.A., i.e., the integrated Italian group controlling the regulated activities in the gas sector.

The SGID transfer agreement provided that, before finalizing the transaction, CDP would transfer to CDP Reti, the Italian leading operator in the electricity transmission networks, its shareholding in Terna S.p.A. (equal to 29.851% of the share capital), and, in connection with the operation, a CDP Reti financing operation worth 1,500 million Euros — 45% of the total amount from CDP and the remaining 55% from a pool of third-party banks — was also provided.

SGID was granted governance rights to protect its investment in the company: it shall have the right to appoint two directors out of five of CDP Reti's Board of Directors, and one member out of three of its Board of Statutory Auditors; it shall have a veto right over the adoption — by CDP Reti's Board of Directors and Shareholders' Meeting — of some specific resolutions.

In order to strengthen the cooperation between the parties, CDP and SGID also agreed that, based on the operational requirements of CDP Reti, SGID shall have the right to (a) propose one or two candidates competing for the company's operational management — without prejudice to the decision-making power of CDP Reti's competent body, and (b) appoint a director in SNAM's and Terna's Board of Directors.

It is also interesting to note that, just when the agreement with SGID was reached, CDP also resolved to continue divesting the remaining 14% of CDP Reti in favour of other Italian institutional investors, without governance rights, such as banking foundations, pension funds and Severance funds⁷⁰.

It should also be pointed out that the SGID investment is the largest Chinese investment in Italy.

Similarly, CDP approved the listing of Fincantieri S.p.A. by placing on the market — especially that of savers — 30% of newly issued shares for capital increase, for a total value of approximately 350 million Euros. In particular, on 3 July 2014, the listing process in the Electronic Stock Market (Mercato Telematico Azionario, MTA), organized and managed by Borsa Italiana S.p.A. through public offer, was successfully completed. 450 million newly issued shares were placed, for a total value of 351 million Euros, directed to both the general public (89.05%) and institutional investors (10.95%)⁷¹.

In this regard, however, it was pointed out that the context in which this operation took place adversely affected the transaction. In particular, the cold reception of the markets following the announcement of the listing led to a change in the initial conditions. In fact, the little enthusiasm shown by investors was thought to be due to the low marginality of the business and the absence of dividends for the next three years. Whatever the reason, Fincantieri decided to cut the offer by a third, and just over 10% of total offer — not 20% as originally planned⁷² — was targeted to the retail public.

However, after a first month not fully up to expectations, the new listed stock regained ground, about 9.3%, that is, almost a quarter of capitalization lost since its debut⁷³.

Lastly, in 2014, the CDP Group, in the framework of its fully-owned subsidiary CDP Gas s.r.l., decided to

⁷⁰ Cassa depositi e prestiti, Release no. 49 of 30 July 2014 on CDP: the Board of Directors approves the sale of 35% of CDP Reti to the Group Chinese State Grid Corporation of China/CDP: the Board of Directors approves the disposal of a 35% stake in CDP Reti to the Chinese Group State Grid Corporation of China).

⁷¹ UniCredit has acted as a sponsor and Banca IMI as the head of public bid placement.

Banca IMI, Credit Suisse, J. P. Morgan, Morgan Stanley and UniCredit were the coordinators of the global sales and subscription offering.

⁷² See Fincantieri, 1.89% finirà ai risparmiatori. Collocamento ridotto di un terzo, Il sole 24 ore, of 30 June 2014, and Ipo Fincantieri, il Tesoro rifà i conti. Meno azioni sul mercato, Il corriere della sera, 27 June 2014.

⁷³ See Le banche d'affari riscoprono Fincantieri. Il titolo vola dopo il crollo della quotazione, in La Repubblica, 13 August 2014.

transfer its holding in *Trans Austria Gasleitung GmbH* (TAG) — a company holding transport rights in the Austrian section of the gas pipeline linking Russia to Italy — to SNAM S.p.A., cashing 505 million Euros.

Actually, before this transaction, CDP GAS' holding in TAG was 89% of the share capital, which corresponds to 94% of the company's economic rights, and had been purchased by ENI S.p.A. in December 2011. Then, under the shareholders' agreements in which CDP GAS had taken over from ENI at the time of the investment, TAG was jointly controlled by CDP GAS and the other shareholder, *Gas Connect Austria GmbH*, an OMV Group's Austrian gas transport company.

The agreement with CDP provided that before the completion of the transaction TAG would also become the owner of the gas pipeline, following the transfer of the branch of company by Gas Connect Austria GmbH, in line with the provisions of the ITO Certification authorized by the Austrian regulatory authority. As a result of this transfer and the resulting increase in TAG's share capital, CDP GAS's shareholding, which was transferred to SNAM, was 84.47% of TAG's share capital, that is, 89.22% of the economic rights.

The transfer was made with a SNAM's capital increase reserved for subscription to CDP GAS, paid by the latter with the in-kind transfer of its shareholding in TAG⁷⁴.

4. Some Specific Cases: Ferrovie dello Stato and RAI Way

The privatization process concerning Ferrovie dello Stato S.p.A., Holding of Gruppo Ferrovie dello Stato, a 100% MEF's subsidiary, deserves a special mention.

Over the years, much has been debated about the correct and timely privatization of the rail and road passenger and freight transport giant operating the railway infrastructure, which is currently made up of several corporate branches. In particular, the Group consists of ten state-owned companies (*BusItalia-Sita Nord*, *Centostazioni*, *Ferccredit*, *Ferservizi*, *FS Sistemi Urbani*, *Grandi Stazioni Rail*, *Italferr*, *Mercitalia*, *Rete Ferroviaria Italiana* (RFI)⁷⁵ and *Trenitalia*), as well as three subsidiaries (*Grandi Stazioni Immobiliare*, 60%; *Italcertifer*, 56,68% and *Netinera Deutschland*⁷⁶, 51%)⁷⁷.

This is particularly important if one considers that Ferrovie dello Stato Italiane is one of the largest companies in Italy, with a staff of almost 70,000 people, guaranteeing over 8,000 trains per day, mobilizing 600 million passengers and 50 million tonnes of freight every year on a 16,700 km long network.

⁷⁴ Cassa depositi e prestiti, Release of 12 September 2014, CDP: Transfer to SNAM of the shareholding in TAG.

⁷⁵ RFI S.p.A., a 100% subsidiary of Ferrovie dello Stato Italiane S.p.A., was established on 1 July 2001, in compliance with the Community directives that ruled the separation between the network operator and the transport service provider. From this date RFI has acquired the effects of the licence granted with Ministerial Decree no. 138-T of 31 October 2000 to Ferrovie dello Stato S.p.A. for the management of the national railway infrastructure. Legislative Decree no. 188 of 8 July 2003 confirmed the mission to the RFI Infrastructure Manager, outlining the various areas of responsibility: ensuring the coordination and safety of rail traffic across the entire network; developing the technology of systems and materials; to ensuring full utilization and constant maintenance of railway lines and infrastructure; investing in the upgrading, modernization of technology and the development of railway lines and installations; overseeing the navigation sector; providing for health surveillance of employees, work environments, the services offered, and places opened to customers; coordinating the research activities of the Experimental Institute on materials, products and the environment; promoting the integration of the Italian Infrastructure into the European Rail Network, coordinating with EU countries on quality standards, actions and marketing strategies for services.

⁷⁶ This is a parent company that controls seven companies governing about 40 companies in the German Länder operating in rail transport, road passenger transport, logistics, vehicle maintenance and repair, and rail infrastructure.

⁷⁷ Additionally, there are sixty-one indirectly controlled companies, most of which are foreign (source: Court of Auditors *Determinazione e relazione della Sezione del controllo sugli enti sul risultato del controllo eseguito sulla gestione finanziaria delle Ferrovie dello Stato Italiane S.p.A. per l'esercizio 2013* [Determination and Report of the Audit Department on the results of the auditing concerning the financial management of Ferrovie dello Stato Italiane S.p.A. for the financial year 2013] - DOC X, no. 178, sent to the Chamber on July 29, 2014).

Also in terms of results and output, Ferrovie dello Stato Italiane is a very profitable asset itself, since in 2014 the Group's revenues were approximately 8.4 billion Euros and the consolidated shareholders' equity was approximately 37.5 billion Euros. Ferrovie has a strategic infrastructure with great technical expertise providing transport services in many European countries, including Germany, and exporting technical *know-how* worldwide⁷⁸.

In the beginning, the privatization season started in 2014 with the sale of shares in Poste Italiane, ENAV and ENEL, should also include 40% of Ferrovie's equity. In particular, the then Government considered that the privatization programme regarding subsidiaries and real estate had a threefold value: "reducing public debt, increasing management efficiency and managerial responsiveness to the markets where businesses operate, and fuelling financing using market instruments"⁷⁹.

In particular, by launching this operation, the Government pursued three major goals: (a) further developing the Group, in terms of overall sales and quality standards of service, (b) spreading the company's shareholding among employees and savers, but above all (c) finding financial resources to reduce public debt.

For this reason, the Prime Ministerial Decree of 16 May 2016 established listing the company through a public offering (OPV) on the regulated Italian market. More specifically, a public offering (OPV) would address Italian savers and the employees of the Group Ferrovie dello Stato, and another public offering (OPV) would be reserved to Italian and international institutional investors. A key element is the fact that the outlined divestment did not involve the ownership of the network, which remains in the hands of the state, without prejudice to the existing separation between network ownership and management.

The choice of the listing procedure was due to the need for increasing transparency (already guaranteed by the Transport Regulatory Authority, ART), and the investors' scrutiny regarding the accounting separation between infrastructure and transport.

As in the case of Poste, in order to encourage the participation Ferrovie dello Stato Italiane's employees, incentive schemes were provided, taking into account the community of savers and the Group's employees, in terms of the offer's reserved shares.

In addition, the process of selling a Ferrovie dello Stato Italiane' share of up to 40% was in line with the European regulatory trend on fair and non-discriminatory access to the rail infrastructure for all operators.

However, although fully planned, this divestment procedure has not been implemented yet. The then Minister of the Economy had established that listing by 2016 was subject to "the achievement of management efficiency results in order to be able to obtain the maximum in terms of revenues", which of course have not been obtained yet. However, what seems to be a decisive factor in the failure to complete the divestment plan is the contingency of the Italian political climate in the second half of 2016, characterized by fierce parties clash due to the then

⁷⁸ Hearing at the VIII Commission — Public Works, Communications of the Senate of the Republic IX Commission — Transport, Post and Telecommunication of the Chamber of Deputies, Sulla dismissione di una quota della partecipazione detenuta dal Ministero dell'Economia e delle Finanze nel capitale di Ferrovie dello Stato S.p.A. e sul relativo schema di decreto del Presidente del Consiglio dei ministri [The sale of a shareholding held by the Ministry of Economy and Finance in the share capital of Ferrovie dello Stato S.p.A. and the relevant draft decree of the Prime Minister], Minister of Economy and Finance, Prof. Pier Carlo Padoan, Rome, 12 January 2016.

⁷⁹ Hearing at the VIII Commission — Public Works, Communications of the Senate of the Republic IX Commission — Transport, Post and Telecommunication of the Chamber of Deputies, Sulla dismissione di una quota della partecipazione detenuta dal Ministero dell'Economia e delle Finanze nel capitale di Ferrovie dello Stato S.p.A. e sul relativo schema di decreto del Presidente del Consiglio dei ministri [The sale of a shareholding held by the Ministry of Economy and Finance in the share capital of Ferrovie dello Stato S.p.A. and the relevant draft decree of the Prime Minister], Minister of Economy and Finance, Prof. Pier Carlo Padoan, Rome, 12 January 2016.

upcoming popular referendum on the constitutional reforms introduced by Mr. Renzi and Ms. Boschi (the so-called Renzi-Boschi reform⁸⁰).

Nonetheless, the Government started the privatization process issuing a call for proposals, of Grandi Stazioni Retail⁸¹, a company resulting from the splitting of the company Grandi Stazioni. In particular, following the meeting of the Board of Directors of Grandi Stazioni S.p.A. on 16 November 2015, Ferrovie dello Stato Italiane and Eurostazioni (holding 60% and 40% of the capital of Grandi Stazioni respectively), started the privatization process concerning the total sale of holdings in GS Retail, resulting from the split of Grandi Stazioni S.p.A., through a bidding procedure. This decision followed the previous resolution of 30 June 2015, which provided for the non-proportional split of the company Grandi Stazioni in three companies: GS Rail (a new name for Grandi Stazioni S.p.A., owned 100% by the Group FS Italiane), GS Immobiliare (focusing on the valorisation of properties held by Grandi Stazioni and owned by FS (60%) and Eurostazioni (40%)), and GS Retail, to be totally privatized⁸².

On 9 December 2015, the Electricity Network was sold to Terna by signing a contract for the transfer of the high voltage electricity network owned by RFI, as established by the 2015 Stability Law⁸³. In particular, the transaction provided for the acquisition by Terna of the entire share capital of Società Elettrica Ferroviaria S.r.l.(SELF), an FS subsidiary operating in the field of power transmission. In the Government's opinion, this industrial operation allowed Ferrovie dello Stato Italiane to focus on its core business, while Terna received assets expanding and strengthening the national electricity grid, also in view of the widespread use of renewable energy sources.

In addition to the rail sector, by the end of 2014, the Government listed RAI Way — a RAI company⁸⁴, selling a share of about 30% of the share capital. In particular, the Prime Ministerial Decree of 2 September 2014, while establishing the launch of a public offering (OPV), guaranteed to the Italian State — through RAI — a share in RAI way of at least 51% of the share capital.

The transfer operation filled the State's coffers with about 300 million Euros⁸⁵.

The sale of RAI Way was echoed in the political debate since it was the subject of a takeover bid (TOB) by Mediaset S.p.A. through Ei Towers, one of the Group's companies, which, however, was not successful, because the Prime Ministerial Decree specified that 51% of RAI Way should remain in public hands.

5. Horizons and Prospects: The Changed Italian and European Political Context: Towards a New Season of Public Intervention?

The privatization process that characterized the 2014-2016 three-year period has recently suffered a severe

⁸⁰ Constitutional Bill C. 2613-D, Chamber of Deputies.

⁸¹ Grandi Stazioni Retail carries out the typically commercial activities of the network stations, in particular commercial leases, Media & Advertising and services for travellers.

⁸² See Definition of the privatization criteria and methods for divesting the holding held by the Ministry of Economy and Finance in the share capital of Ferrovie dello Stato Italiane S.p.A. — Government Act 251 of 2/12/2015.

⁸³ Law of 23 December 2014, no. 190.

⁸⁴ The following belong to the RAI Group: RAI Way, as a network operator, is in charge of transport and radio and television signals; RAI Pubblicità [Advertising], which deals with advertising collection for all channels and broadcast media and for all the Group companies; Tivù-TivùSat, which manages the free Italian satellite platform that was developed to facilitate the transition to digital terrestrial television broadcasts; RAI Cinema, which aims to acquire, in Italy and abroad, and manage the rights to use audiovisual, cinematographic, television and multimedia products; Rai Com, which manages the distribution of products and rights of RAI productions (source, <http://www.raiway.it/web/guest/group-rai>).

⁸⁵ Source: http://www.dt.tesoro.it/it/attivita_istituzionali/privatizzazioni/privatizzazioni_societa_indirettamente_partecipate.html.

setback that, as we have seen, prevented Ferrovie dello Stato Italiane from being listed, as well as the further divestment of MEF's holding in Poste.

It could be pointed out that, the origin of this setback is to be found in the outcome of the so-called constitutional referendum, which led to the resignation of the Prime Minister in office and the formation of a government whose main task was to lead the country to the next electoral consultations, possibly passing — in the meantime — a law guaranteeing stability and governability.

However, this first impression shall go hand in hand with some deeper considerations, drawing on a changed European and global political context aimed at rediscovering nationalist and, at times, protectionist petitions.

In particular, this refers to Brexit, a departure characterized by an extreme isolationist election campaign and overemphasis on (alleged) dangers resulting from commercial and “social” integration policies. The introduction of the single currency in an indiscriminate group of European countries with very diverse economies has put a strain on the underlying mechanisms of the global crisis, reducing the purchasing power of households and making people perceive a widespread poverty, especially within the middle class.

In addition, the 46th President of the United States received much of the support that led him to the White House through policies that are essentially against free-trade agreements and the development of the globalised market.

On the Italian side, the unprecedented large migratory wave of the last few years and the never-ending state of emergency of the Italian public finances, with a public debt of approximately 133% of GDP, are increasing the feeling that going back to protectionist and nationalist policies will allow for a more effective control of the situation and the social and financial emergencies.

It is no coincidence that the same majority party that called for the need for privatization apparently has decided to put a brake on what is already in the pipeline. Apparently, the reason for this change of direction is - as usual - the fear of not being able to make people understand the reason for these sell off operations and their effectiveness, giving instead the impression of “removing” services or raising prices⁸⁶.

So the temptation is to go back to “statism” or, in any case, to a widespread presence of the State in the economy and services in order to guarantee usability and accessibility. An obstacle in this respect, at least in Italy, is the dramatic situation of public finances and the Euro-unity regulation, which is increasingly aimed at creating and stabilizing a competitive market that can hardly be achieved if public monopoly positions remain in place.

In this respect, the recent story regarding the control of Saint-Nazaire's building sites on the Loire estuary, for which the French and Italian Governments had reached a partnership agreement in 2016, is emblematic. In particular, the building sites controlled by STX Corporation, a South Korean corporation on the brink of bankruptcy, would now be under the control of Fincantieri (which, in turn, is a CDP subsidiary) that would have taken a share of approximately 66%.

However, with the new French Administration and after a bitter election campaign, where the President-elect run against an ultra-nationalist, radical right-wing candidate, the ruling French Government decided to guarantee to the State the majority of Saint-Nazaire's works, blowing the agreement reached by the previous Administration apart.

In such a context, even in consideration of the new push towards public intervention, the long-awaited and so

⁸⁶ “Orfini warns the government: *“Fiducia sullo ius soli e basta privatizzazioni”*”, La Stampa, Turin, 22 February 2017; *“Privatizzazioni, nuovo fronte nel governo”*, Il sole 24 ore, Turin, 17 February 2017; R. Prodi, *“Lo Stato guidi con autorevolezza la privatizzazione dei servizi pubblici”*, <http://www.romanoprodi.it>, 19 February 2017.

much needed privatizations in our country seem to be moving further away.

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