COMMISSION DECISION (EU) 2019/1968

of 2 August 2019

on the measure SA.21445 - C42/2006 implemented by the Republic of Italy to remunerate Poste Italiane for the current accounts deposited with the Italian Treasury

(notified under document C(2019) 5649)

(Only the Italian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

1. PROCEDURE

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

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

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

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

([1]) GU C 290 del 29.11.2006, pag. 8

([2]) See footnote 1.

([3]) Commission Decision 2009/178/EC of 16 July 2008 on a State aid scheme implemented by Italy to remunerate current accounts held by Poste Italiane with the State Treasury (C 42/06 (ex NN 52/06)) (OJ L 64, 10.3.2009, p. 4).

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

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

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

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

2. DETAILED DESCRIPTION OF THE MEASURE AND THE BENEFICIARY

2.1. **Poste Italiane**

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

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

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

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

2.2. **The measure**

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

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

([4]) Judgment of the General Court in case T-525/08, *Poste Italiane SpA v Commission*, ECLI:EU:T:2013:481.

([5]) http://ec.europa.eu/competition/calls/tenders_closed.html, ref COMP/2014/017.

([6]) The universal service comprises the conveyance of items of correspondence and addressed printed matter weighing up to 2 kg and postal packages of up to 20 kg; as well as a service of registered items and service of insured items.

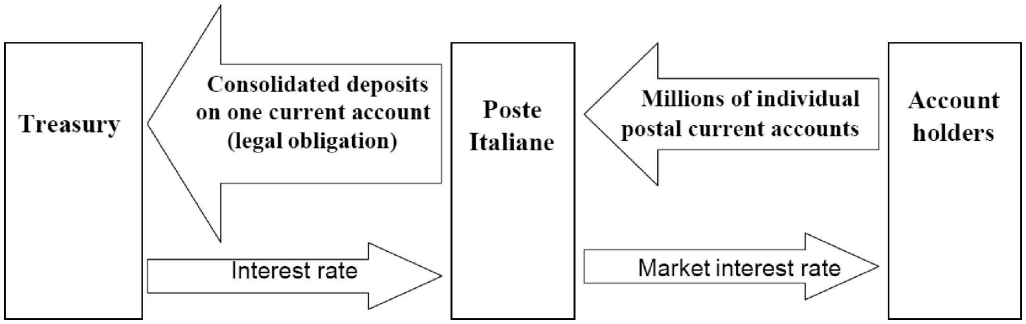
([7]) Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67EC with regard to the further opening to completion of Community postal services (OJ L 176, 5.7.2002, p. 21).

([8]) According to Article 5 of Law Decree No 269 of 30 September 2003 and the Conversion Law No 326 of 24 November 2003, CDP shares are assigned to Italy. Moreover, bank foundations and other public or private entities can only hold, in aggregate, minority shares of CDP capital.

([9]) The postal current account service has been essentially governed by a law of 1917, published in G.U. 219 of 6 September 1917, modified by Decree 822 of 22 November 1945, published in GU 12 of 15 January 1946. Until 2003, the law established notably that the funds collected on postal current accounts are deposited with a CDP's account bearing an interest rate equal to the rate received CDP on its financing activity less 15 hundredth of a percentage point. Following a decree of 5 December 2003, the Treasury replaced CDP.

([10]) Published in G.U. 302 of 29 December 2005, 'supplemento ordinario' 211.

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



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

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

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

(19) By virtue of Law No 296 of 27 December 2006 ('the 2006 Law') ([15]), Italy modified the 2005 Law. The 2006 Law defined a new investment framework: the requirement that PI deposit the funds collected on current postal accounts belonging to private customers (i.e. not belonging to the Public Administration) was abolished and those funds had to be invested by PI in Euro area Government bonds ([16]). Pursuant to the 2006 Law, the new investment framework was gradually implemented during the course of 2007 and completed by the end of that year.

2.3. **The 2008 Decision**

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

2.3.1. *Prudent private borrower*

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

([11]) Published in G.U. 288 of 12 December 2003.
([12]) A ministerial decree of 3 April 2006 approved the implementation of the Convention.
([13]) BTP: Buoni del Tesoro Poliennali.
([14]) BOT: Buoni ordinari del Tesoro.
([15]) Published in G.U. 299 of 27 December 2006.
([16]) According to Italy, the amount of funds collected on postal accounts belonging to private customers represents around 70-75 % of the total amount of funds collected on postal accounts.

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

(a) the gross amount of the deposited funds;

(b) the stability of the deposited funds;

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

(d) the financial risk borne.

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

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

(25) Regarding the average duration/maturity of the deposits, the Commission distinguished between active fund management, which would have been possible in the absence of the Convention, and passive fund management, resulting from the Obligation. A prudent private borrower should have expected that the Obligation would have been changed within a maximum of five years, and would have taken that into account when determining the loan rate. In an active fund management framework, the Commission stated that the average maturity of the global amount of funds collected on postal accounts was slightly less than five years. Accordingly, a prudent private borrower should have based the market remuneration of the stable part of the deposits on the yield of a five-year bond (instead of the 10 or 30 years yield, as required by the Convention). Concerning the volatile part of the deposits, a prudent private borrower would have based the remuneration on three-month Treasury bills (instead of the 12-month Treasury bills, as required by the Convention).

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

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

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

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

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

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

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

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

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

(33) The General Court noted that even if the rate granted to the prudent private borrower was not at the level of the market rate, PI would benefit from an advantage only if the Convention's rate was higher than the return PI could have reasonably achieved in the absence of the Obligation.

(34) The General Court determined that the Commission could not conclude that the measure benefitted PI without actively demonstrating that, in the absence of the Obligation, PI could not have gotten a higher return by investing the deposits from the postal current accounts as compared to the Convention's rate.

(35) The General Court concluded that the Commission had made a manifest error in the 2008 Decision by concluding that the measure was advantageous for PI based on the positive difference between the Convention's rate and the rate granted to the prudent private borrower.

(36) The General Court considered the reasons put forward by the Commission to contest the relevance of the elements presented by Italy as not sufficiently substantiated.

(37) The General Court also noted that the Commission had assessed, *ad abundatiam*, the returns achieved by the investments made by PI with the funds collected through its insurance activities and returns generated in the framework of an active fund management strategy, and had concluded that such alternative investments strategies would not have generated interest rates similar to or higher than that set by the Convention over the relevant period, from a risk/return perspective.

(38) The General Court assessed whether the Commission's conclusion, based on its assessment of the alternative investments strategies proposed by Italy, that the measure constituted State aid was correct.

(39) The General Court held that the management fees related to postal current accounts and insurance products were not relevant to the comparison of the returns generated by the Convention's rate and the alternative investment strategies. Consequently, the Court held that the Commission had been wrong to deduct those fees, and that the comparison between the Convention's rate and the returns 'netted' of those management fees related to insurance products was not relevant to the assessment of whether the measure constituted State aid.

(40) Regarding the active fund management strategy, the General Court stated that the Commission could not make a meaningful comparison between the Convention's rate and the return of the active fund management strategy by focusing on a limited period of three years, which was not representative of the returns achieved by active fund management strategy.

(41) Moreover, the General Court held that the fact that capital gains are an important parameter of active fund management strategies and should therefore not be omitted from an analysis of the measure's compatibility with the internal market. The Commission had argued that capital gains should be omitted from the analysis, as they could have not been foreseen *ex-ante*, and, as a result, returns generated by an active fund management strategy after deducting those capital gains were lower than the Convention's rate or the rate granted to the prudent private borrower.

(42) The General Court held that the fact that the returns generated by the active funds management strategy, after deducting capital gains, was lower than the Convention's rate was not relevant to establishing the existence of an advantage within the meaning of Article 107(1) TFEU.

([17]) 2013 ruling, paragraph 65 *'la Commission a uniquement examiné le niveau de rémunération que le Trésor aurait pu demander unilatéralement compte tenu de quatre paramètres, à savoir la masse des fonds déposés, la stabilité de ces fonds, la durée moyenne du dépôt des fonds et les risques financiers supportés. Dans ces conditions, le taux de l'emprunteur privé, défini aux considérants 119 à 180 de la décision attaquée, ne constitue pas véritablement un «taux de marché»'.*

(43) The General Court held that the Commission's conclusion in the 2008 Decision that, in the absence of the Obligation, PI would not have been able to achieve returns equal to or higher than the Convention's rate, was based on erroneous or incorrect information.

(44) The General Court therefore annulled the 2008 Decision. The 2013 ruling was not appealed.

3. COMMENTS FROM INTERESTED PARTIES

3.1. Comments from ABI

(45) In its letter of 27 December 2006, ABI submitted the following comments:

(a) ABI indicated that the funds deposited with the Treasury represented a debt to be paid by the Treasury the year following the deposit. As the Commission argued in the opening decision, ([18]) the Treasury, and not PI, would cover the liquidity risk associated with the deposited funds. This would mean that, in case of decrease of the deposited amounts from one year to the next, the Treasury should both remunerate PI at the rate fixed by the Convention and reimburse PI for the difference in the deposited amounts.

(b) According to ABI, the nature of the funds collected on the Treasury account is short term. Moreover, these funds are used to finance ordinary budget needs.

(c) Moreover, on the basis of the ministerial decree of 5 December 2003 (see recital 15), CDP opened two current accounts with the Treasury, bearing a variable interest rate equal to the simple average of the gross 6-month interest rate of Treasury bills and the Rendistato interest rate ([19]).

(d) Finally, in order to assess whether the PI's remuneration for the funds deposited with the Treasury constitutes State aid, the interest rate allocated to PI should have been compared to the interest rate of short-term (12-month) Treasury bills. In January 2005, the rate of a 12-month Treasury bill was 2,21 %, which implies that the PI's remuneration would be overestimated by 1,69 %.

3.2. Comments from Italy

(46) In its letters of 31 October 2006, 29 December 2006, 16 February 2007, 30 March 2007, 2 April 2007, 1 June 2007, 27 November 2007, 29 February 2008, 7 March 2008, and 23 April 2008, Italy submitted several arguments.

(47) First, Italy recalled that the 2005 Law and the Convention specified that the financial interest paid to PI had to be set according to market parameters. No advantage was derived from that interest, according to Italy.

3.2.1. *Variation in the amounts deposited with postal current accounts*

(48) Second, Italy argued that postal current accounts should only be compared to banking current accounts as of 2001, when the new product 'Conto BancoPosta' was launched. Before 2001, the amounts deposited with the Treasury varied, for example there was a significant reduction in the current accounts' deposits in the late 1990s, in particular between 1996 and 1997, which resulted from the adoption of Law No 662 of 23 December 1996, which imposed the closure of the accounts used by the Treasury to pay State pensions. This closure led to a reduction in deposits of approximately EUR 11 billion (as of 1 January 1997). According to Italy, it is difficult to identify the exact cause for such variations, due to exogenous political factors and the fact that PI was a public institution at that time. After the transformation of PI into a public company in 1998, the amounts deposited with the Treasury grew regularly and steadily.

3.2.2. *Nature of the Convention*

(49) Italy stated that the Convention between the Treasury and PI regulated their financial relationship in a transparent way. On the one hand, the Convention had a three-year duration and was not unlimited in time; on the other hand, the Convention foresaw the possibility for either party to revoke the contract if market conditions no longer guaranteed the consistency of the mechanism of calculating the remuneration of the deposit.

([18]) See footnote 1.

([19]) Since 1 October 1995, Rendistato comprises the average gross yield on Government bonds subject to taxation and with a residual maturity of more than one year. (Source: Bank of Italy).

(50) According to Italy, the choice of a floating interest rate for the Convention helped to ensure conformity with a market-conform rate. In particular, the floating interest rate represented a fair rate for the Treasury because it entailed costs for the Treasury in line with the cost of alternative financing sources, e.g. medium/long term debt.

(51) Italy states that, since 2007, PI has adopted a conservative approach to its active funds management, which differs from that of the Convention, because it allows PI to build a portfolio based on an asset allocation in line with the company's objectives and financial strategy.

3.2.3. *Changes to the legal obligation to deposit funds with the Treasury*

(52) Italy informed the Commission that the law requiring PI to deposit with the Treasury the funds collected on the postal current accounts was repealed in December 2006, by the 2006 Law. According to this law, the funds collected on the postal current accounts of private customers were invested by PI in Euro area Government bonds (see recital 19). The new law was designed to provide PI with greater financial autonomy.

3.2.4. *Stability of the funds collected on postal current accounts*

(53) In support of its position on the stability of the deposited funds, Italy submitted the results of two models: the internal statistical models elaborated by PI and the model elaborated by PI and the consulting company […], aimed at identifying the prudential trend of funds collected on postal current accounts.

(54) The internal models were based on the analysis of the daily deviation of the amounts of funds collected on postal current accounts and the average amounts, using only the historical trends of the current accounts. The models show a growing trend in the amounts deposited with the Treasury (funds collected on accounts of private customers represent around 75 % of the total funds collected on postal current accounts). The stable part of the deposits shows a growing trend and represents 90 % of the total average deposit (from 85 % in 2002 to 92 % in 2006). Likewise, the internal models establish a volatile part of deposits, which has fallen to about 10 %.

(55) The […] model, which Italy considers to be very conservative, demonstrated that the duration of the total number of postal current accounts was different from the duration of a single postal current account. If some customers had indeed decided to close their accounts from one day to the next, the effect on the total amounts of funds collected by PI were marginal because of the high number of customers, the fact that the average deposit on those accounts was low and that new customers' deposits essentially replaced leaving customers' deposits.

(56) The type of prudential model developed by […] was used by several Italian banks in the context of their active management of liquidity, at the time of the Convention, in order to determine the duration of their current accounts, and then to mirror that duration in a corresponding investment portfolio as part of their assets/liabilities management ('ALM'). That prudential model was used by PI to identify the duration of the funds collected on postal current accounts (owned by private persons ([20])) during the period 2005-2006, when PI was obliged to deposit all the funds with the Treasury (passive management of liquidity), and for the period beyond 1 January 2007, where the funds collected on postal current accounts of private customers are invested by PI in Euro area Government bonds (active management of liquidity).

([20]) In 2006, the postal current accounts owned by private persons (i.e. excluded the public administration) amounted to […], of which […] belonged to retail customers and […] to undertakings.

3.2.4.1. Passive fund management

(57) According to Italy, within the context of passive management of PI's liquidity, the […] model sought to quantify the duration of the stable and volatile parts of the deposits identified by the internal models on the basis of the historical volatility of postal current accounts and on the probabilistic behaviour of the accounts holders. One model specification ([21]) indicated that approximately two-thirds of the funds had a very long duration and one-third had a duration varying from 0 to 10 years. Consequently, the corresponding investment portfolio would have had an average life of 4,1 years and a Macaulay duration ([22]) of 3,2 years. In an alternative model specification ([23]), the corresponding investment portfolio will have an average life of 4,9 years and a Macaulay duration of 3,8 years ([24]).

3.2.4.2. Active fund management

(58) According to Italy, within the context of active management of PI's liquidity, the […] model supported PI in the definition of the optimal asset allocation. Based on very prudential hypotheses, it indicated that it was reasonable for PI to adopt an asset allocation with a 4 to 5-year average life.

3.2.5. *Costs of postal current accounts*

(59) Regarding the costs relating to the collection and deposit of funds stemming from the postal current accounts of PI customers, Italy indicates that PI's analytical accounting system allows for determining the costs of the activity of PI as a whole, and not by product. Italy stated that PI's margins were lower than the corresponding margins in the banking sector.

3.2.6. *Consistency between the Convention's remuneration and the Treasury's financing cost*

(60) Italy stated that the Convention allowed PI to be remunerated on the basis of the yields of the Treasury bonds, the main funding instrument available to Italy.

(61) In particular, the Convention allowed PI to be remunerated on the basis of long term rates, which were in line with the horizon of the funds collected on the postal current accounts. The Convention also protected the Treasury against adverse market conditions, by allowing it to revoke the Convention it had become inconsistent with the cost of alternative financing sources.

(62) On the basis of a comparison between the rate foreseen by the Convention and the Treasury's financing costs, Italy submitted that the cost of medium/long term funding of the Treasury was in line with the rate set by the Convention.

(63) Moreover, (i) the rate of remuneration set in the Convention is indexed to parameters linked to Italy's public debt (government securities) that constitute the most appropriate reference for the Treasury's financing costs; (ii) the stability of the funding, as verified through statistical models and the Obligation imposed on PI make the investment permanent for the most part (without considering specific safety measures – such as the possibility of early withdrawal, the three-year term of the relationship – that protect the Treasury from unforeseen changes in the market); (iii) the liquidity risk assumed by the Treasury is limited in consideration of the proven stability of the postal funding, having indexed 10 % of such funding to short-term parameters.

(64) Regarding the long term element of the loan rate (90 %, composed of (i) the 10 % linked to the yield of 10-year Italian Government bonds, and ii) by the 80 % linked to the yield of 30-year Italian Government bonds), Italy considered that the Obligation was different from an obligation to directly invest in Italian Government bonds, where Italian Government bonds could be freely chosen and freely manageable.

([21]) The VaR model, using a 10-year cut-off point.

([22]) The Macaulay duration is the weighted average time until cash flows are received, where the weight of each cash flow is determined by dividing the present value of the cash flow by the sum of the present value of all cash flows. It is measured in years.

([23]) The linear depreciation model, using a 10-year cut-off point

([24]) In the letters sent by Italy, the terms duration and average life are often used interchangeably, although they can refer to different concepts. This does not have any impact on the assessment carried on in this Decision.

3.2.7. *Market conformity of the remuneration granted to PI for the postal current accounts deposited with the Treasury*

(65) The loan rate was market-conform because the funds deposited with the Treasury had a long-term duration. This was due to the fact that the Obligation was not limited in time and due to the stability of the funds collected on the postal current accounts of PI's customers and deposited with the Treasury. In addition, Italy considered that the Obligation precluded PI from applying active, and potentially more advantageous, management of the funding. In the absence of the Obligation, Italy contends that PI could have invested 10 % of its liquidity in short-term bonds and 90 % in long-term bonds.

(66) Regarding the market conformity of the interest rate paid to PI, Italy provided the opinion of the auditors of PI and comfort letters by private banks and consultants. PI's auditors stated that because of their characteristics and growth rates, the funds collected on postal current accounts were stable. Private banks and consultants ([25]) agreed that the returns achieved by PI on the funds collected on current postal accounts and deposited with the Treasury were similar to market returns achievable by PI by implementing appropriate investment and risk management strategies.

3.2.7.1. Comparison with the returns achieved on Poste Vita products

(67) Italy considers that the remuneration obtained by PI on the funds deposited with the Treasury was in line with the remuneration obtained by Poste Vita on its invested funds. Italy contends that life insurance policies are products that can be considered comparable to postal current accounts and that the average interest rate on the invested proceeds of those products (e.g. *Posta Più*) was 4,68 % during the period 2002-2006, which corresponds to the Convention rate (4,55 %).

(68) Italy considers that postal current accounts and life insurance policies were comparable financial products because postal accounts were short-term products but *de facto* they were similar to medium term financial instruments, with minimum guaranteed capital and return.

3.2.7.2. Comparison with La Banque Postale

(69) According to Italy, *La Banque Postale's* (France) ALM strategy was based on the same kind of statistical model used by PI, during the period under assessment.

(70) That statistical model identifies the stable and volatile funds collected on postal current accounts. The stable funds are invested in OECD-zone bonds and the volatile funds in short-term instruments bonds. On the basis of this model, in 2005 the return on the investment of *La Banque Postale*'s current accounts was 4,4 % (vs. 3,9 % foreseen by the Convention).

(71) More specifically, the example of *La Banque Postale* demonstrated that it is possible to have higher returns on investment than those set by the Convention by using prudential ALM of an average duration of 5 years.

3.2.7.3. Comparison with other alternative investment strategies (active management of funds)

(72) In order to demonstrate that the remuneration set by the Convention did not grant any advantage to PI, Italy provided the Commission with a study conducted by […]

(73) The […] Study developed the following analysis:

(a) The remuneration paid by the Treasury to PI on the deposits could be deemed to be fair because:

(1) The expected duration of such deposit base, net of a component theoretically more volatile, is extremely long and virtually infinite.

(2) The features of such deposit base are transferred to the Treasury by law.

(3) The indexation paid by the Treasury is based on 12-month Treasury bills for 10 % (the most volatile component), on 10-year Italian Government bonds for 10 % (the component which under more conservative assumptions could potentially decrease over time), and on 30-year Italian Government bonds for 80 %.

(4) The Obligation underpins the permanent nature of the relationship between PI and the Treasury.

([25]) Letter of […], letter of […], letter of […], letter of […], letter of […].

(5) The constraints on PI as depositor incorporated implicit costs and burdens:

(a) The deposit at the Treasury cannot be considered a short term 'risk free' asset in light of PI's permanent obligation to deposit funds with the Treasury.

(b) The impossibility for PI to enter into active fund management strategies (the quantitative analysis conducted by […] is aimed at establishing the relevant resulting costs).

(b) A comparison of PI's interest margin with the comparable private sector banks' interest margin revealed that the cost for PI's deposits from retail customers is in line with the cost of retail depositors of private sector banks. In addition, the interest margin achieved by private sector banks on the deposits component of their funding is significantly higher than PI's, which in […]'s view represents proof that no State aid was granted to PI.

(c) A comparison of PI's asset liability tenor mismatch with its private sector peers revealed that PI's deposit base has a 'virtually infinite' duration component conservatively estimated to at least 60,8 % of the total. Pursuant to the Convention, PI uses the proceeds of its deposit base to fund a long-term asset such as the deposit with the Treasury. To ascertain the behaviour of private sector banks, the financials of banks specialised in funding the public sector (such as Dexia, Depfa, etc.) were analysed. Such banks show similar patterns. In fact, public sector banks fund themselves for approximately 50 % on the medium to long term, and the remainder on repos with the ECB or interbank deposits, while investing their total funding in illiquid public sector assets issued by governments or local authorities, usually with maturities from 10 to 50 years.

(d) A quantitative analysis aimed at proving the benefit of an active asset management based on PI's investment in a portfolio of European Government bonds starting March 2007. The analysis is grounded in two elements, the first based on the analysis of potential past performance, the second on a future evolution:

(1) […] retrospectively applied fund management strategies to PI's deposit portfolio, one involving a similar duration as the portfolio of the […] study in the Value-at-risk (VaR) specification (referred to as the 'benchmark portfolio') and another (referred to as a 'tactical strategy') using the same criteria and investment constraints currently adopted by PI. The latter strategy is based on an automatic quantitative model. The return obtained over the last 10 years under the tactical strategy would have exceeded the Convention return over the same period by approximately 1,62 % per annum (without taking into consideration transaction costs, however). The return obtained over the two-year period 2005-2006 (2,45 %) would have been lower than the Convention return (4,14 %).

(2) Looking at the future, […] identified certain fund management solutions that PI could implement to obtain incremental returns on the passive investment in Government bonds without adding significant incremental risks. As evidence of such strategies, the […] Study provides the following detailed description:

(a) Strategies based of the sale of purchase option on Government bonds, which would achieve an extra yield in 2008 of […];

(b) Construction of a synthetic sovereign Euro zone bond, which would achieve an extra yield in 2008 of […];

(c) Management of a portion of existing capital gains achieved on the portfolio, which would achieve an extra yield in 2008 of […]; and

(d) Bonds switch in the portfolio, which would achieve an extra yield in 2008 of […].

(74) As for the comparison between Treasury deposit's remuneration and the remuneration offered by active management fund strategies, Italy explained that such a comparison had to be made over a significant time horizon – 10 years – in order to take into account a full economic cycle. This was the reason why […] compared the Convention return against the returns from alternative strategies over a 10-year period and not over a shorter period. Therefore, when interest rates grow, fixed rate portfolios tend to under-perform compared to floating rate portfolios, whereas the opposite occurred in the case of decreasing interest rates.

(75) According to Italy, over a 10-year period, investment portfolios based on floating rates can be compared to investment portfolios based on fixed rates, because of the compensation of capital gains and capital losses. Over a 10-year period, in fact, returns of fixed-rate portfolios tend to be in line with returns of floating-rate portfolios. Active funds management clearly provides better returns than passive ('parametric') investments such as the Convention (e.g. the return of the 5-year duration benchmark used by […] is in line with the Convention return, the duration of which is much longer)

(76) Furthermore, according to Italy, the Commission should distinguish between short term and long-term risk. Whereas it is true that the value of fixed-rate securities with a duration of 10 years can vary a lot in the short term, over the entire 10-year period fixed-rate bonds give a very reliable (because fixed) rate of return. All in all, over a 10-year period, returns of fixed-rate portfolios would tend to be in line with returns of floating-rate portfolios, the latter in fact being more risky (because subject to yearly changes in interest return).

(77) Moreover, true alternative investment strategies that are flexible and can be based on all possible financial instruments offered by the market, offer a higher possibility of better results than passive investments such as the Convention.

(78) In addition, Italy underlined that, at the moment of the conclusion of the Convention with the Treasury, the future trend of interest rates was unknown. The choice to use floating parameters for the Convention was economically rational, according to Italy, because it was fair to the two parties: PI and the Treasury. The option to revise the Convention after three years and to cancel it every year allowed any of the two parties to withdraw from the agreement in case the remuneration had become unfair or inconsistent, due to evolving market interest rates.

(79) The […] Study also shows that the Obligation generated opportunity costs and risks for PI by limiting the spectrum of its investment option. The deposit with the Treasury was exclusively linked to the credit risk of Italy, preventing PI from seeking diversified investment opportunity within the European Government bond market. Moreover, such credit risk was compounded by the liquidity risk due to the long-term nature of the deposit tenor without early redemption rights.

(80) Italy justifies the comparability of the Convention mechanism (based on variable interest rates) with the quantitative models used by […] aimed at proving the benefit of an active asset management (based on fix interest rates) by stating that it is usual practice for market operators trading in bonds and for PI since 2007 to foresee fix interest rate investments. They also contend that the comparison between the Convention mechanism and the quantitative models used by RBS has to be analysed in the light of the comparison between passive and active management of funds rather than between two remuneration mechanisms based on fixed and floating interest rates.

(81) Finally, Italy argues that the Convention mechanism based on short-term remuneration for the volatile component of the funds deposited with the Treasury adequately estimates the real liquidity risk borne by the Treasury.

3.2.8. *Remarks to ABI's comments*

(82) According to Italy, the rate on the deposit with the Treasury could not be a short-term rate (e.g. interest rate of 12-month Treasury bills) because of the stability of the deposits.

(83) Italy indicated that, using (as done by ABI) 2005 as a reference year, resulted in an inappropriate analysis because 2005 was the year when interest rates on short-term Treasury bills were at their lowest.

(84) Regarding the comparison made by ABI with the remuneration obtained by CDP on its liquidity deposited with the Treasury (remuneration equal to a floating six-month rate calculated as the simple arithmetic average of the gross yield on six-month Treasury bills and the monthly Rendistato index), Italy contends that CDP cannot be compared to PI since it is a different company in terms of structure, activities, business' objectives, operations, organisation and investment policies. Italy also contends that, since the monthly Rendistato index represents a medium/long-term rate, ABI contradicts itself in considering that PI's liquidity deposited with the Treasury should be remunerated according to short-term parameters.

(85) Italy also argues that the uniqueness of its Treasury deposits made it difficult to identify one single substitutive instrument. However, because of the stability of postal current accounts, the deposit of these funds with the Treasury could be compared to the funds collected by means of long-term bonds for the most part. The stability of the postal current accounts made a comparison with short term (12-month) Treasury bills irrelevant.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid

(86) In order to ascertain whether a measure constitutes aid within the meaning of Article 107(1) TFEU, the Commission has to determine (i) whether the measure is granted by the State or through State resources; (ii) whether the measure provides an economic advantage; (iii) whether the measure is capable of distorting competition by selectively favouring certain undertakings or the production of certain goods; and finally, (iv) whether the measure affects trade between Member States. All of these conditions must be met in order for a measure to constitute State aid within the meaning of Article 107(1) TFEU.

(87) By means of the 2013 ruling, the General Court annulled the 2008 Decision. Notably, the Court considered that the Commission had made a manifest error by concluding that the measure constituted State aid, based on the positive difference between the rate of the Convention and the rate granted to the prudent private borrower. In order to demonstrate that the measure indeed provides such an economic advantage, the Commission should have clearly demonstrated that, in the absence of the Obligation, PI could not have reasonably got a return higher than or equal to the Convention's rate by investing the deposits from the postal current accounts in the market.

(88) Accordingly, this assessment addresses whether an economic advantage was provided, failing which the measure would not amount to State aid within the meaning of Article 107(1) TFEU.

(89) The Commission considers that the comparison between the Convention and the alternative investments available to PI in the absence of the Obligation should take properly into account the investments' risk and their interactions with the risks arising from PI's liabilities (i.e. the aggregate customers' deposits), from an integrated asset/liability management perspective. The comparison should then be carried out either between the return available under the Convention and the return of investments holding a risk level similar to the one of the Convention, or between risk-adjusted returns.

(90) The Commission also recalls that the analysis of the possible advantage granted by the Convention to PI has to be made *ex ante*. The estimation of the returns available under the alternative investments should be made in accordance with the information available to the parties at the moment the Convention was passed.

(91) The Commission first reviewed the comparisons submitted by Italy, as summarised in Section 3.2.7. Italy claimed that the alternative investments, which could have been available to PI in the absence of the Obligation, offered similar or higher returns than the Convention and that this demonstrated that the Convention did not entail any advantage for PI. The Commission found that these proposed alternative investments are not proven to be comparable to the Convention from a risk perspective. As a result, they cannot form a basis for the assessment described by the General Court, as they do not allow for a meaningful conclusion on whether PI benefitted under the Convention.

— In the comparative analysis of PI's insurance activities (see recitals 67-68), Italy claims but does not prove that the life insurance policies are comparable to postal current accounts and that the risks of the investments, made on the back of these products, are comparable to the risks associated with the Convention.

— In the comparative analysis of *La Banque Postale's* investment strategy (see recitals 69-71), Italy does not prove that the liability profile of *La Banque Postale* matches that of PI or that the investment profile of *La Banque Postale* is similar to PI's investment profile under the Convention.

— In the comparative analysis of other investment strategies, as presented in the […] study (see recitals 72-81), PI's liability profile is taken properly into account in accordance with the assessment performed by […] (see recitals 53-58), and a synthetic measure of risk, i.e. the volatility of the returns, is presented. However, the Commission noted that the proposed alternative investments bear a different level of risk than that of the Convention and that, therefore, the return of these alternative investments – if not risk-adjusted – cannot be compared with the return available under the Convention.

(92) In addition, Italy claimed that the absence of any *ex-ante* advantage for PI resulted from the option – available to both PI and the State – to cancel the Convention each year, in case the remuneration had become unfair (see recital 78). However, the Commission considered that this option did not exclude a potential advantage for PI. The option did not cover the first year and there was no obligation for Italy to exercise it, even if it would have been convenient to do so, in the following years.

(93) Based on the above, the Commission concludes that the arguments brought forward by Italy are not sufficient to draw a meaningful conclusion on whether or not the Convention provided an advantage for PI. The Commission then applied the assessment described by the General Court in this case. To this aim, the Commission estimated the expected returns/risks offered by a comprehensive set of alternative investment strategies, available in the absence of the Obligation. For technical support on these issues, the Commission selected the University of Perugia via a tender process, whose experts produced a report in November 2015 ('the Experts' Report').

4.2. **Summary of the Experts' Report**

(94) The Experts' Report examines the investment made by PI under the Obligation, whose return is governed by the Convention, and potential alternative market investment strategies, which could have been considered by PI in the absence of the Obligation for the period 2005-2007 for the funds collected through postal current accounts. The Report also estimates the respective risk-return profiles using only information available to PI at the time of the investment.

(95) The Experts' Report simulates how PIs liabilities (i.e. deposits) are expected to evolve over time. As those liabilities are claims of depositors, PI can only invest what depositors do not withdraw. As a consequence, the experts estimate so-called liability patterns ('LP') which model the amount of funds expected to be available to PI over a certain time period, which PI can therefore invest. For that estimation, the Experts' Report distinguishes the stable components of the liabilities from the volatile components. Only the stable components can be invested in short or long term maturity assets according to the estimated LP.

(96) The Experts' Report considers two liability patterns — LP1 and LP2 — which differ in how the stable component of the deposits is treated (i.e. the part that is not withdrawn during the next 30 years under the modelling assumptions). In both scenarios, the Experts' Report assumes that the total amount of the collected funds will decrease in time because of the withdrawal of the current account deposits. LP1 allocates outflows with a modelled maturity of more than 30 years proportionally over a period of 30 years. LP2 allocates all outflows with a modelled maturity of more than 30 years to the outflow at year 30. Under the assumptions of the Experts' Report, the difference is significant as roughly 60 % of all deposits have a modelled outflow dates beyond 30 years. On that basis, under LP1, outflows occur regularly between one and 30 years, whereas under LP2, only 40 % of outflows occur between one and 30 years and 60 % occur at year 30 only.

(97) With respect to the question on which of the two liability patterns would present a more appropriate assumption, the Experts' Report argues that the less conservative liability pattern LP2 is more appropriate. To support this conclusion, the Experts' Report submits that PI is different from a typical commercial bank to the extent that (*i*) PI was not subject to the prudential regulation applicable for banks and thus to the requirement of higher capital level for longer-term investments; and that (*ii*) PI is not exposed to the same risk of massive withdrawals and liquidity crisis as a typical bank, because PI is considered by a large part of the investors to be the same as Italy. The Experts' Report argues that this perception is consistent with the expectation that, in case of a liquidity crisis, Italy would be forced to finance any insolvency position of PI to avoid a contagion effect leading to a deterioration of credit standing of the entire stock of public debt.

(98) The Commission notes that the Experts' Report suggests that the funds deposited by PI on the Treasury account were *de facto* not short-term in nature. A short-term horizon of the funds was suggested by ABI, which claimed that the remuneration of the Treasury deposit should have corresponded to its short-term nature (see recital 45). At the same time, the Commission recalls that the long-term nature of the funds deposited by PI with the Treasury, as assessed in the Experts' Report, is not sufficient to determine the absence of State aid. Pursuant to the assessment required under the 2013 ruling, a meaningful comparison of the returns/risk both under the Obligation and free of the Obligation is necessary to effectively determine whether the measure gave PI an advantage.

(99) Accordingly, the Experts' Report constructs a dynamic interest rate model that allows for the calculation of prices of bonds based on the model of the interest rate yield curve at any point in the future. The Report considers three interest rate scenarios: stationary (stable), increasing and decreasing interest rates, compared to the yield curve prevailing at the time of the Convention.

(100) The Experts' Report then examines the risk-return characteristics of the actual investment that PI undertook under the Obligation and whose return is governed by the Convention. Here, the risk — which is entirely due to changes in the interest rate that has an impact on the bond prices used to calculate the appropriate remuneration rate under the Convention — is very low. In fact, the risk level is 0,11 %, 0,17 % and 0,06 % under the stationary, increasing and decreasing rate scenarios, respectively.

(101) Regarding the available investment strategies, PI was allowed to invest only in Euro area investment grade bonds at the time of investment. Correspondingly, the experts consider strategies based on Italian Government bonds of different maturities and a strategy using Euro area Government bonds for the comparison.

(102) When examining the available investment strategies, the Experts' Report considers two main risks: the risk resulting from a gap between the maturities of PI's assets (the Italian Government bonds) and its liabilities (the deposits), and the risk of a sovereign default by Italy.

(103) The gap or mismatch between the maturities of assets and liabilities creates liquidity risk (i.e. the risk that PI does not have sufficient liquid means to meet withdrawal requests by depositors at a given point in time). That liquidity risk is limited, however, when the assets (i.e. Italian Government bonds) are easy to sell. If PI had to sell those bonds prior to their maturity, the market price would be driven by the prevailing interest rate at the time, thereby making PI vulnerable to interest rate risk, leading to potential capital gains or losses. This risk is explicitly modelled in the Experts' Report.

(104) Regarding the risk of a sovereign default, the Experts' Report points out that PI also bears the sovereign risk of default by Italy under the Convention. Therefore, the Experts' Report considers that the use of Italian Government bonds in the model allows for the same sovereign risk in both strategies and presents a like-for-like comparison without explicit modelling.

(105) The Experts' Report analyses five different strategies:

— The first investment strategy is a buy-and-hold strategy. Under this strategy, PI purchases Italian Government bonds and holds them until maturity. The Experts' Report assumes that such bonds are available for all maturities (i.e. for any time period) and priced according to the modelled yield curve. Given that appropriate bonds can be purchased to match precisely the maturity of assets, the strategy leads to a perfect match between the maturity of assets and liabilities so that there is no interest rate risk at all in this strategy.

— The second strategy is similar to the first but removes the assumption that bonds are available for any time period. Now, PI does bear some interest rate risk because there are deposit outflows expected for times where no bond is available in the market to cover them. Therefore, PI might be forced to invest in some bonds with a longer maturity and sell them prior to their maturity to cover expected deposit outflows, which leads to some risk of capital gains or losses.

— The third strategy is another buy-and-hold strategy but introduces a voluntary strategic maturity gap between the maturity of the bonds and the deposits. Here, the maturity gap is generated by PI investing in assets with a maturity longer than the expected deposit outflows. Therefore, PI accepts the interest rate risk related to having to sell the underlying bond in order to cover the corresponding deposit claim at the time when such a claim arises in return for a higher yield on bonds with a longer maturity.

— The fourth strategy is a dynamic trading strategy where PI dynamically buys and sells bonds. In particular, PI invests all the funds collected under the postal current account in a bond of a given maturity — considered are five, ten or 20 years — sells it after 15 days and reinvests the proceeds in another bond with again the same maturity (i.e. the newly bought bond matures 15 days after the sold one). Given that outflows of deposits are considered only at the end of a given year, the amount invested in any given year is considered constant with respect to outflows and fluctuates only with respect to changes in the interest rate. Therefore, the resulting annual rates of return of this strategy are independent of the liability pattern.

— As a fifth strategy, the study also considers PI to invest entirely in a long term Euro area Government bonds index. This index includes Euro area Government bonds (and not only Italian Government bonds) of maturities longer than 10 years. This strategy departs from the framework of the previous strategies since the underlying credit risk is not just on Italian Government bonds but a mix of Euro area Government bonds. Additional modelling assumptions are made to cover that additional risk. Again, outflows of deposits are only considered at the end of a given year, making the annual returns independent of the liability pattern.

(106) The five investment strategies are simulated in the Experts' Report. For all strategies except the Euro area Government bond strategy, the risk-return profile is estimated under the three different interest rate scenarios: stationary, increasing and decreasing rates.

(107) Finally, the Experts' Report examines what investment strategy PI implemented when the funds were released from the Obligation in 2007. The Report demonstrates that the funds were invested in five-year Euro area Government bonds and they again provide the risk-return of such an investment on the basis of their model. The Experts' Report concludes that the strategy was suboptimal as it leads to a lower return with higher risk (0,65 %) than what could have been achieved by following one of the alternative investment strategies.

(108) Having estimated risk-return profiles for all investment strategies, the experts then use portfolio pricing theory to determine whether the investment that PI had to undertake under the Obligation and whose return was governed by the Convention in fact provided an economic advantage to PI (i.e. whether the return received under the Convention taking into account the risk of the investment was higher than achievable returns at equivalent risk levels in alternative investments).

(109) To that effect, the Experts' Report combined the risk-return characteristics of all available alternative investments into a single investment function expressing the achievable market return as a function of the risk taken. If the risk-return characteristics of the Convention were to lie above that function (i.e. if under the Convention, PI were to achieve a higher return for equivalent risk than available in the market) then one would have to conclude that there had been an advantage.

(110) On the basis of these considerations, the report concludes that only using the conservative liability pattern LP1 and only under the expectation of increasing interest rates, the Convention provided PI with a higher return. In that scenario, taking into account the fact that PI was later ready to accept a risk of 0,65 %, the advantage would amount to only 0,29 percentage points. Under LP2, no advantage would be provided in any interest rate scenario.

4.3. **The Commission's assessment of the Experts' Report**

(111) The Commission finds some scenarios more plausible than others with respect to specific assumptions or interpretations made in the Experts' Report. In particular, the Commission disagrees with the use of liability pattern LP2.

(112) The Commission notes that the experts' report is only using information available prior to the conclusion of the Convention, as requested in the 2013 ruling, with the exception of the reference to the 0,65 % risk level accepted by PI after the end of the Obligation. The Commission disagrees with the use of 0,65 % as the appropriate risk level to estimate the expected return in the absence of the Obligation.

(113) First, the choice of the liability pattern has an important impact on the expected return of different investment strategies. As stated in recitals 96-97, there are significant differences with respect to the assumptions about deposit outflows that follow from the choice of LP1 or LP2. The average duration of PI's deposits — i.e. the weighted average time of keeping those deposits available — varies significantly between roughly nine and fourteen years, respectively, under LP1 and LP2.

(114) The Commission notes that the durations under both LP1 and LP2 exceed the maximum duration of five years recommended by the European Banking Authority ('EBA') to model non-maturing liabilities such as deposits.

(115) The Commission has assessed the question of the average duration of PI's deposits to be used for the assessment required under the 2013 ruling. It considers that LP2 seems significantly over-optimistic with respect to the average expected retention of customer deposits. However, PI's customer deposits' duration may in practice exceed the five years recommended by EBA, as proposed by the Experts' Report. In its assessment, the Commission has balanced the following considerations:

(a) EBA recommendations of a deposit's duration of five years were only issued in 2015, as the regulatory requirements in terms of liquidity management had been reinforced.

(b) Under the current EBA recommendations, if the deposit-taking institution can demonstrate that it has accurately modelled its deposit repricing profile ([26]), a higher duration could be deemed appropriate.

(c) As also claimed by Italy (see recitals 53-56), the profile of customers of postal banks could be considered more stable than that of customers of typical commercial banks. In fact, postal banks may attract customers with average or less than average incomes and an older age, who tend to be less rate-sensitive. As a result, PI's deposit duration could be expected to exceed the five years recommended by EBA.

(d) At the same time, the Commission considers that the arguments made in the Experts' Report and set out in recitals 96-97 are not sufficient to justify a preference for LP2 over LP1. The Experts' Report claims that LP2 could be justified, in this specific case, given that PI was not subject to the prudential regulation applicable for banks, and that PI's image perceived by large part of the investors is the same as Italy. However, the Commission considers that:

(1) the absence of regulatory capital requirements for PI does not affect *per se* its depositors' behaviour, and certainly not in the sense of increasing the horizon of their deposits with PI;

(2) the depositors cannot be expected to consider PI's risk profile the same as Italy. In fact, assuming that Italy would be forced to finance any insolvency position of PI, as suggested in the Experts' Report, would imply the existence of State aid in the form of an implicit guarantee.

(116) On the basis of the above, the Commission accepts LP1 as a realistic assumption for determining the prudent investment strategy that PI would have pursued in the absence of the Obligation during the relevant period.

(117) Further, the Commission recalls that the Experts' Report stated that the expected Convention's rate is higher than the expected return of alternative investment strategies, only under the increasing rate scenario, by 0,29 percentage points (see recital 110). However, those 0,29 percentage points had been calculated by comparing the expected market return at a risk level of 0,65 %, while the return under the Convention showed a risk level of 0,17 % under the increasing rate scenario.

([26]) https://www.eba.europa.eu/documents/10180/1084098/EBA-GL-2015-08+GL+on+the+management+of+interest+rate+risk+.pdf

(118) The Commission does not find any justifiable reason to compare returns at different risk levels, in particular because the applied risk level of 0,65 % had been calculated in the Experts' Report by considering the investment strategy that PI eventually implemented after the Obligation had been revoked (see recital 104). Such a consideration does not seem suitable for use in a methodology which should take into account only information which was available on an *ex-ante* perspective.

(119) Therefore, the risk level used to calculate the achievable market return for comparison with the rate under the Convention should be the same as the risk of the Convention, i.e. 0,11 %, 0,17 % and 0,06 % under the stationary, increasing and decreasing rate scenarios, respectively.

(120) On that basis, the Commission notes that for LP1, the expected advantage under the Convention in the increasing rate scenario would therefore be approximately 0,5 percentage points, rather than 0,29 percentage points. For stationary and decreasing rates, achievable market returns would continue to be greater than the return under the Convention, by roughly 0,15 percentage points for stationary rates and 0,4 percentage points for decreasing rates.

4.4. **Conclusion**

(121) The expected rate under the Convention is lower than the expected return of alternative investment strategies, in a stationary rate scenario, at similar risk levels, in the absence of the Obligation. As a result, the rate under the Convention did not entail an immediate advantage for PI.

(122) The Commission has no element to assume that PI or Italy could reasonably have expected a specific rate trend at the time when the Convention was concluded. Accordingly, applying the same probability to the three rate scenarios (i.e. decreasing, stationary and increasing rates), the expected rate under the Convention is marginally lower than the expected return of alternative investment strategies, at similar risk levels, in the absence of the Obligation. As a result, the Convention did not provide an advantage for PI.

(123) On that basis, the Commission concludes that the evidence is not sufficient to prove that PI benefitted from an advantage under the Convention,

HAS ADOPTED THIS DECISION:

Article 1

The remuneration paid by the public authorities of the Italian Republic to Poste Italiane pursuant to Law No 266 of 23 December 2005 and the Convention in the years 2005-2007 does not constitute aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Republic of Italy.

Done at Brussels, 2 August 2019.

For the Commission
Margrethe VESTAGER
Member of the Commission