The '*vincolo europeo*', Italian Privatization and the European Commission in the 1990s

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Privatization and European Integration[1]

The privatization wave that took place in Western Europe in the late 1980s and early 1990s was "*un événement d'importance historique majeure*". Between 1990 and 1998, European Member States accounted for 65% of the proceeds from privatizations in the OECD area and 45% worldwide. However, the implications of this far-reaching transformation of the 'public hand' for both individual Member States and Community institutions have still not been adequately investigated.[2]

Even though a hotly debated ideological topic, privatization was the answer to very practical motivations, i.e. restructuring national economies at a time of technological change and growing globalization, while the financial crisis and the increase in interest rates in the late 1980s forced many countries to adopt measures to reduce public deficits, perceived as incompatible with large, and often largely loss-making, industrial public sectors. Financial and technological constraints revealed the overall incapacity of most Western European countries to cope with investments in leading sectors such as electricity and telecommunications, which were traditionally entrusted to public enterprises. Technological development in these sectors opened up new opportunities of industrial restructuring and greater competition, especially in the European market.

In European Member States such processes were also affected by the political, economic and institutional context of the Single Market, and accelerated after the signing of the Maastricht Treaty in 1992 and the launching of the European monetary union. Indeed, the Single Market itself was one response to the twin challenges of

1. I wish to thank Romano Prodi for giving me access to his personal papers and for the interview on the events here reconstructed; Jean Marie Palayret and Andrea Becherucci for their kind assistance at the Historical Archives of the EU in Florence; Ilaria Mandolesi for her kind assistance at the IRI Archives in Rome; and the Department of History of the European University Institute, for a visiting fellowship which eased the final drafting of this work. This article is part of a larger research project on the *History of IRI*, in four multi-authored volumes, forthcoming.

2. D. BARJOT, *Nationalisations et dénationalisations: une mise en perspectives historiques*, in: *Entreprises et histoire*, 3(2004), p.9; J. CLIFTON, F. COMÍN, D. DÍAZ FUENTES, *Privatisation in the European Union. Public Enterprises and Integration*, Kluwer, Dordrecht, 2003, pp.28 and 92-98; D. PARKER (ed.), *Privatisation in the European Union : theory and policy perspectives*, Routledge, New York, 1998, p.19. On the general trend of privatizations in Western countries, see OECD, *Privatising State-Owned Enterprises. An Overview of Policies and Practices in OECD Countries*, Paris 2003.

globalization and technological change.[3] Privatization should thus be assessed also as the outcome of national policies, framed in the common logic of deregulation in the Single Market "as a condition for international competition".[4]

This article will focus on some specific aspects related to the case of Italy. Although part of this general trend, Italy showed some significant peculiarities due to the extent of the public sector and its traditional strong mingling with the political system.[5] It was not by chance that the privatization phase coincided with the end of the Cold War and with the crisis of traditional parties, whose legitimization lay to a great extent on the Cold War order and on the political control of state-owned industry. The financial crisis of the late 1980s and early 1990s revealed the sudden financial unsustainability of such system. As a consequence, Italy was among the countries that made the most consistent effort to carry out privatizations. Already in 1998, Italy stood out as the second country in the world in terms of total proceeds coming from privatization. The 1992-1999 total proceeds from denationalization – about 178,000 billion liras – represented 12.3% of Italy's 1992 GNP: on average, privatization yielded a yearly value of about 1.5% of GNP, with a peak of 1.7% in 1999.[6]

Moreover, Italy 'negotiated' with the European Commission on the timing for a reduction of the public sector debt through the so-called Andreatta-Van Miert agreement. This episode raises the more general question of 'external constraint' (*vincolo esterno*), and in particular of 'European constraint' (*vincolo europeo*), a concept which has been elaborated mainly by the studies on Italy's entry to Maastricht: "consistent with the logic of *vincolo esterno*, governments can identify strategic advantages in being bound by EU commitments".[7] In Italy's case, scholars have underlined the formation of an élite consensus, favoured by the imposition of Community constraints and by the crisis of the traditional political system, which eased the adoption of measures aimed to meet the Maastricht criteria.[8]

3. Y. CASSIS, *Globalisation, entreprises et identité européenne*, in: *Entreprises et histoire*, 2(2003), pp.5-11; E. BUSSIÈRE, *Conclusion*, in: G. BOSSUAT (dir.), *L'Europe et la mondialisation: l'originalité des communautés européennes dans le processus de mondialisation*, Soleb**,** Paris, 2007.
4. J. CLIFTON, F. COMÍN, D. DÍAZ FUENTES, *Privatisation in the European Union* ..., op.cit., pp.99-100.
5. In 1990 the public sector represented over 20% of the value added produced, contributing 38% to the formation of fixed capital and over 20% to national employment overall. M. MALGARINI, *Le privatizzazioni in Italia negli anni Novanta: una quantificazione*, in: S. DE NARDIS (ed.), *Le privatizzazioni italiane*, il Mulino, Bologna, 2000, pp.86-87.
6. Official data from OECD and the Italian Treasury reported by P.A. TONINELLI, *Between State and market. The parabola of Italian public enterprise in the 20th century*, in: *Entreprises et histoire*, 3(2004), pp.53-74.
7. K. FEATHERSTONE, *The Political Dynamics of the 'Vincolo Esterno': the Emergence of EMU and the Challenge to the European Social Model*, in: *Queen's Papers on Europeanisation*, 6(2001), p.2; K. DYSON, K. FEATHERSTONE, *Italy and EMU as a 'Vincolo Esterno': Empowering the Technocrats, Transforming the State*, in: *South European Society and Politics*, 1/2(1996).
8. V. DELLA SALA, *Hollowing out and Hardening the State: European Integration and the Italian Economy*, in: *West European Politics*, 1(1997), p.29.

It was Guido Carli, Treasury Minister between July 1989 and June 1992, who referred to a *vincolo esterno* as a policy guideline to enforce financial restructuring, which otherwise would have been politically difficult to obtain.[9] The concept has then entered historiography, as one of the 'characters' of the relationship between Italy and European integration.[10]

At the same time, as this article will show, Italy was also able to use the Andreatta-van Miert agreement to pursue very practical objectives and domestic policy goals. This confirms, on the one hand, that the *vincolo europeo* needs to be further and better defined as a methodological tool; on the other hand, that the dynamics of 'Europeanization' is not a one-way process, but a relationship based on reciprocal interaction and mutual entanglement of national and Community policies.[11] If Community commitments can impose various types of constraints on Member States, then the same commitments may contribute to redefining the role and legitimation of European institutions themselves. This interaction underwent a decisive qualitative shift as a consequence of the launching of the Single Market and Monetary Union:

> "From the mid-1980s to the mid-1990s, the entangled history of contemporary Europe was rewritten […]. The contemporary European state cannot be considered on its own terms. The EU has become an integral part of the European state's fabric and identity, transforming with it the contemporary historian's craft".[12]

This article will attempt to analyze the subtle nature of the *vincolo europeo* in redefining the 'public hand' in the Italian economy during the 1990s, and at the same time, how privatizations reshaped the identity and supranational regulatory role of the European Commission.

The Italian public sector and the Single Market

The Single Market represented a challenge for Italian industry, and in particular for state-owned industry, which was accumulating substantial losses. In November 1982,

9. "I advised my action to the idea that for our Country the existence of an international legal constraint would have a positive effect on the restructuring of healthy public finances, retaining pessimistically, that without this obligation it would be difficult for our political class to change its approach", in: G. CARLI, *Cinquant'anni di vita italiana*, Laterza, Roma-Bari, 1993, p.406.
10. R. GUALTIERI, *L'Europa come vincolo esterno*, in P. CRAVERI, A. VARSORI (eds), *L'Italia nella costruzione europea. Un bilancio storico (1957-2007)*, Franco Angeli, Milano, 2009, p.329; A.VARSORI, *La Cenerentola d'Europa? L'Italia e l'integrazione europea dal 1947 ad oggi*, S. Mannelli, Rubbettino, 2011; S. FABBRINI (ed.), *L'europeizzazione dell'Italia: l'impatto dell'Unione europea sulle istituzioni e le politiche italiane*, Laterza, Roma-Bari, 2003.
11. Literature on this theme is now vast. See M. GREEN COWLES, J. CAPORASO, T. RISSE (eds), *Transforming Europe: Europeanization and Domestic Change*, Ithaca, Cornell University Press, 2001; A. HÉRITIER et al., *Differential Europe. The European Impact on National Policymaking*, Rowman & Littlefield, Lanham, 2001.
12. J. PALMOWSKI, *The Europeanization of the Nation-State*, in: *Journal of Contemporary History*, 3(2011), p.657.

Romano Prodi was appointed the Chair of IRI, the main Italian public holding company. A professor of industrial policy at the University of Bologna, close to the Catholic political milieu, Prodi sought to restructure the IRI Group in the new European and worldwide scenario. As he stated before the Parliamentary Committee for industrial restructuring, the launching of the Single Market represented "a decisive challenge" for IRI.[13] Such challenge did not require a choice in terms of public or private but, rather, in terms of industrial reorganization and the opening up to international competition.

However, the increase in interest rates in the second half of 1987 and the pressures for consistent reduction of public expenditure put at risk investments in advanced sectors, such as telecommunications, transport and energy. Although Italian industry was "able to fully satisfy the supply needs envisaged and to ensure the technological evolution of products", IRI feared that failure to invest in these sectors would widen an "already unjustifiable gap to date" with the rest of Europe, especially in view of the "complete opening of European markets scheduled for 1992".[14]

The challenge was also political, as it raised the question of the public sector's ability to modernize the infrastructures of national growth.[15] According to IRI, membership of the European Community meant a substantial reduction of "the intervention tools, whereby national governments […] can pursue general and sectorial competitiveness, no longer having the option of customs protection or unilateral modifications of exchange rates".[16]

Financial constraints, globalization and European integration therefore called for a change in the role of public enterprises. Some early privatizations were set up within this context – among them the sale of Alfa Romeo (IRI) to Fiat in 1986, and the sale of Lanerossi (ENI) to Marzotto – which, however, were not part of a coherent plan to reduce the weight of state-ownership in the Italian economy. Consequently, "the share of public enterprises in economic activity […] remained broadly constant during the 1980s".[17] The limit of these early privatizations was substantially political. As Prodi would later recall:

> "Looking back at the 1980s we see that, even though there was no political or government program on privatization, we had a sort of denationalisation process, driven by public enterprises in an attempt to reorganise and regain both efficiency and a degree of autonomy".

13. Historical Archives of the European Union, Florence (hereafter HAEU), Romano Prodi Papers (RP), 119, Intervento del Presidente dell'Iri prof. Romano Prodi alla Commissione parlamentare per la ristrutturazione e riconversione industriale, 30.11.1988.
14. HAEU, RP 457, Iri. Direzione Pianificazione e Controllo. Nota per il Comitato di presidenza, 13.11.1987.
15. For a similar position, see CENTRE EUROPÉEN DE L'ENTREPRISE PUBLIQUE, *The role of public enterprise in the economic revival of Europe*, Ceep, Brussels, 1984; Ceep, *Europe, concurrence et service publique*, Masson/Armand Colin, Paris, 1995.
16. IRI, *Rapporto sull'IRI*, Roma, 1991.
17. A. GOLDSTEIN, *Privatization in Italy 1993-2002 : goals, institutions, outcomes, and outstanding issues*, CESifo Working Paper n.912, Munich, April 2003.

However, "growing political opposition brought the process to an end by the late 1980s".[18]

"Growing political opposition" is actually a euphemism ("my first experience as Chairman of IRI – Prodi would later recall – was my Vietnam").[19] Indeed, it was a period of fiery political clashes, which would lead to Prodi's resignation at the end of September 1989. According to the *Financial Times* "an important phase in Italian industrial history" was coming to an end. Unsurprisingly, the Italian political system would strongly oppose the transformation of the economic structure on which a large part of its own power had been built.

> "But external pressures could be more important and here, as so often in the past, it could be the European Community which is the true catalyst for change in Italy. If its competition rules come to be more strictly applied in the 1990s they could be a potent force for financial discipline in the public sector".[20]

Surely the Treasury Minister Guido Carli – who succeeded Giuliano Amato in the government led by the Christian Democrat Ciriaco de Mita and took office in July 1989 immediately after the European Council of Madrid, which had passed the Delors Plan on EMU – was determined to "limit expenditures and promote privatizations". Carli maintained that privatization was "the key to everything".[21] Nonetheless, privatizations would continue to face cross-party political opposition that froze those projects in Parliament meant to provide the necessary legislative framework for privatization. Then finally in July 1990, under Law No.218 (the so-called Amato-Carli law) came the first, laborious, approval on the general principles to transform public credit institutions into public limited companies.

This kind of opposition was not an Italian peculiarity. During the intergovernmental conference for the Treaty, Italians were not alone (in this case, they were supported by the French and other delegations) in wanting to exclude privatizations from the commitments to be made prior to Monetary Union. Both the Italian representative, Mario Draghi, director general of the Italian Treasury, and the French representative, Jean-Claude Trichet, already at the second meeting of the special representatives in January 1991 asked to take this topic off the agenda. The issue had been raised by the German delegate who asked to discuss "open markets, free prices, and privatizations" among the objectives of economic policy to be fulfilled in the Treaty. At least another five Member States supported the Italian position and, in effect, the final version of the Treaty of Maastricht made no reference to either privatizations or price regimes.[22]

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18. HAEU, RP 146, R.PRODI, *The economic reforms in Italy: the privatisation case*, typescript, 27.10.1993.
19. Author's Interview with Romano Prodi, 15.12.2011.
20. *After the professors. John Wiles reports on the struggle over who is to run Italy's two state industrial giants*, in: *Financial Times*, 30.10.1989.
21. P.CRAVERI, *Introduzione,* in P. CRAVERI (ed.), *Guido Carli senatore e ministro del Tesoro, 1983-1992*, B. Boringhieri, Torino, 2009, p.XXXV.
22. K. DYSON, K. FEATHERSTONE, *The road to Maastricht : negotiating Economic and Monetary Union*, Oxford University Press, New York, 1999, pp.237 and 526.

State aid and the European Commission

The Treaty of Rome was basically "neutral" with regard to the ownership of companies, leaving it up to each Member State to define the boundaries between public and private.[23] The European Community, and then the European Union, has usually dealt with the question of public enterprises only in relation to possible distortion of competition.[24]

Competition policy is a long standing "common" policy, dating back to the first von der Groeben Directive of 1962 (Regulation No.17/62), which placed DG IV at the core of the Community's regulatory role and "economic constitution".[25] Since then, competition policy has been "à la fois un facteur d'unification du marché et de mutation des structures", requiring continuous national 'adjustments' and emerging as one of the privileged spheres of the 'Europeanization' of national regulatory States.[26]

The application of a competition policy in the Community was improved by the Single European Act, which also enhanced the role and visibility of the Commissioners to Competition, who, since the early 1980s, "acted openly as motors of change". The Irish Peter Sutherland (Commissioner to Competition in the first Delors Commission from 1985 to 1989) and his successor, the British Leon Brittan (in the second Delors Commission from 1989 to 1993) provided DG IV "with effective and visionary leadership".[27] The Belgian Karl Van Miert (Commissioner to Competition from 1993 to 1999, in the third Delors Commission and in the Santer Commission) underlined in his memoirs how the competition policy, which he carried out with great determination, was intended as a natural continuation of von der Groeben's, in the new framework of the Single Market.[28]

In the context of the competition policy, state aid took on particular importance, as one of the fields in which the role and identity of the Brussels institutions as supra-

23. S. CASSESE, *La costituzione economica dell'Europa*, in: *Rivista italiana di diritto pubblico comunitario*, 6(2001), pp.907-921.
24. F. MCGOWAN, *Ownership and Competition in Community markets*, in: T. CLARKE, C. PITELIS (eds), *The Political Economy of Privatization*, Routledge, London, 1993.
25. K. SEIDEL, *DG IV and the Origins of a Supranational Competition policy: Establishing an economic constitution for Europe*, in: W. KAISER, B. LEUCHT, M. RASMUSSEN (eds), *The history of the European Union : origins of a trans- and supranational polity 1950-72*, Routledge, London, 2009; S.HAMBLOCH, *EEC Competition Policy in the Early Phase of European Integration*, in: *Journal of European Integration History*, 2(2011), pp.237-251.
26. E.BUSSIÈRE, *Conclusion*, in: *Histoire, Economie, Société*, 1(2008), pp.103-104; M. LODGE, *Varieties of Europeanisation and the National Regulatory State*, in: *Public Policy and Administration*, 2(2002), pp.43-67.
27. M. CINI, L. MCGOWAN, *Competition policy in the European Union*, Palgrave Macmillan, New York, 2009, p.31.
28. K. VAN MIERT, *Le marché et le pouvoir: souvenirs d'un Commissaire européen*, Ed. Racine, Bruxelles, 2000.

national regulatory authorities was immediately tested.[29] According to Leon Brittan, state aid was "the last resort of the protectionists within the Community". To guarantee the sound working of the Single Market, it was necessary to overcome "the folly of excessive state intervention".[30]

According to the first Survey on state aid in the European Community, in 1986 Italian state aid accounted for 55% of the overall Community aid. According to the third Survey, published in 1993, the

> "highest aid levels (expressed as a percentage of value added) in the manufacturing industry are found in Italy, Portugal and Ireland. […] Taking the four largest European economies, the level of aid in Italy measured as a percentage of value added was three times higher than in the United Kingdom, more than twice that of Germany, and more than one and a half times higher than France".[31]

Italy thus became the privileged testing ground of the Commission's new activism on competition rules, starting from the legal proceedings on the restructuring plan of Finsider (the finance company heading IRI's steel industry), and on state aid granted to Alfa Romeo in view of its sale to Fiat, held as incompatible with the Common Market according to art.92 of the EEC Treaty (on the same grounds a legal proceeding was initiated on the sale of Lanerossi to Marzotto). The Commission retained that the injection of public money aimed to avoid placing the burden of losses on the private buyers, and was therefore a competition distorting factor to the detriment of companies operating in the same sector.

Italy appealed against the decision, but on 21st March 1991 the Court of Justice of the EC rejected the Italian claim on the ground that state aid should be "evaluated according to its effects and not to its declared purpose or form". It was necessary to

> "determine, on a case by case basis, the following: if state participation in the capital of the beneficiary company is seeking a profit, it therefore takes the form of the State or the public company acting as a private operator; if, however, State participation is pursuing a public interest, it therefore has to be considered as a State intervention".

To distinguish these two kinds of interventions, the Court introduced the criterion "of the private investor acting within a free market context".[32]

The question was debated for some time, until October 1992, when as a result of an exchange of letters between Brittan and the Italian Minister of Industry and State

29. P. NICOLAIDES, M. KEKELEKIS, M. KLEIS, *State aid policy in the European Community: principles and practice*, Kluwer Law International, Alphen, 2008; P. NICOLAIDES, A. VAN DER KLUGT (eds), *The Competition Policy of the European Community*, European Institute for Public Administration, Maastricht, 1994.
30. L. BRITTAN, *European Competition policy. Keeping the Playing-Field Level*, Brassey-CEPS, Brussels, 1992, pp.28-29; L. BRITTAN, *The Europe we need*, Hamilton, London, 1994, pp.81-82.
31. COMMISSION OF THE EC, *Censimento degli aiuti di stato nella Comunità europea*, OPOCE, Luxembuourg, 1989; and Id., *XXII*nd *Report on Competition Policy*, OPOCE, Luxembourg, 1992, p.213.
32. Causa C-305/89 Alfa Romeo, in: COMMISSION OF THE EC, *Diritto della Concorrenza nelle Comunità europee*, vol.II b, OPOCE, Luxembourg, 1997.

Participations, Giuseppe Guarino, the Commission decided to suspend a further referral of Italy to the Court of Justice, pending decisions by the Italian authorities on "privatization programmes of state-owned companies".[33] It was indeed a delicate political step, revealing the increasing role of European institutions as regulatory bodies. According to Sabino Cassese, the issue of "state-owned companies as a form of aid" was the heart of the matter, in that it revealed the essence of the "most general principle of the European economic constitution", that is, "the economic policy of Member States has to serve Community objectives".[34] As observed by Guarino himself in an academic paper, the Community state aid regime in the new context of the Single Market implied that Member States give up "a large part of their sovereignty".[35]

In 1992, Romano Prodi, in writing about the new activism of the Commission on state aid, observed:

> "What is new today is that there are people in Brussels who are making decisions which will somehow force us to alter the boundaries between public and private even in our Country".[36]

The start of Italian privatization as seen by Brussels

The start of the privatization process in Italy was dictated by the financial and currency crisis and coincided with the collapse of the traditional party system, accelerated by court trials on political corruption. In 1992 the total public debt to GDP ratio reached a record 108.8%; IRI and ENI were facing enormous losses; and the Italian lira dropped out of the EMS in September 1992. Thereafter began the phase of the so-called 'technocrat governments' (1992-1994) led by 'independent' figures: Giuliano Amato, an outstanding law scholar already close to a Socialist party that was breaking up, headed the government from June 1992 to April 1993; Carlo Azeglio Ciampi, former Governor of the Bank of Italy, was Prime Minister from April 1993 to May 1994. Both supported privatization along with a series of restructuring measures meant to pave the way for Italy to be included in the first stage of the single currency.[37] Only in April 1994, when Silvio Berlusconi won the elections for the first time heading a new movement (Forza Italia), and again in 1996, when Romano Prodi won

33. HAUE, RP 361, IRI, CdA, 28 September 1989; HAEU, RP 146, Contenzioso Alfa Romeo.
34. S. CASSESE, *La costituzione economica* ..., op.cit., pp.915-917.
35. G. GUARINO, *Pubblico e privato nella economia. La sovranità tra Costituzione ed istituzioni comunitarie*, in: *Quaderni costituzionali*, 1(1992), pp.43 and 55.
36. R. PRODI, *Il tempo delle scelte: lezioni di economia*, Ed. Il Sole 24 ore, Milano, 1995, 1992[2], p. 112.
37. M. DE CECCO, *La politica italiana delle privatizzazioni*, in: M. AFFINITO, M. DE CECCO, A. DRINGOLI, *Le privatizzazioni nell'industria manifatturiera italiana*, Donzelli, Roma, 2000, p.XXXVI.

the elections heading a new political aggregation (L'Ulivo), did a new party system emerge.

Here, we will deal only with some specific aspects of the privatization process, limiting ourselves to the relationship between the Italian government and the European Commission.[38]

Starting from Law No.359, 8 August 1992, enacted by the Amato government (which transformed IRI, ENI, INA, and ENEL into joint stock companies and assigned their shares to the Treasury), a decisive acceleration took place in the process. In the meantime, in Brussels the legal proceedings on state aid to the Italian steel industry continued, involving the newly formed company Ilva, which had succeeded Finsider and Italsider, then in liquidation. In January 1993, the Braun Report on the reorganization of the European steel sector predicted cuts in both production capacity and jobs, for which the Council had earmarked 9,000 Ecu for each job lost. The Commission would accept such aid only if subordinated to reductions in production capacity. Given their political relevance, however, such reductions, according to the Chief Executive of IRI, Michele Tedeschi, "should be conducted at the governmental level".[39]

The question was handled by the Ciampi government, which came into office in April 1993. The new Minister of Foreign Affairs Beniamino Andreatta, an economist and an influential Christian Democrat, had always been in favour (also on moral grounds) of a reform policy of state-owned companies. Romano Prodi (very close to Andreatta) was called back as the Chair of IRI with an explicit mandate to privatize, with a view to meeting the Maastricht criteria.

An "informal" meeting between Prodi and Van Miert was planned in Strasbourg on 23-24 June 1993. The meeting – called by Andreatta – would explain the "privatization side" of the Ilva Plan, and took place immediately after the Copenhagen European Summit of 21-22 June 1993. During the summit, Ciampi made it known to the President of the Commission, Jacques Delors,

> "the need for a closer dialogue between the Community and the Italian representatives for a better understanding of our needs at a European level and, at the same time, a more accurate application of EEC regulations in Italy".

IRI hoped that Van Miert, who had replaced Brittan, would adopt "a less dogmatic attitude" and "a competition policy more sensitive to companies' needs in face of international competition". Brittan had been an ideological Commissioner, who had embodied "the liberal ideas of the 1980s", while one could expect that Van Miert, a "socialist", would prove more flexible. However, IRI feared that Brussels still ignored "the exact entity" and "the wide significance" of the "historical revolution in the

38. On this phase, see A. GOLDSTEIN, G. NICOLETTI, *Le privatizzazioni in Italia 1992-1995: motivi, metodi, risultati*, in: A. MONORCHIO (ed), *La finanza pubblica italiana dopo la svolta del 1992*, il Mulino, Bologna, 1996.

39. HAEU, RP 146, Piano CEE di ristrutturazione della industria siderurgica, September 1993; Intervento dr. Tedeschi a Bruxelles, 29.04.1993.

relationship between state and economy" that Italy was undergoing. The Community should "facilitate this transitional phase" and "the removal of the ongoing legal controversies without excessive penalization or formalism".[40]

The EFIM case and the genesis of the Andreatta-Van Miert agreement

The liberalization directives in the financial, bank and services sectors, following the Single European Act, represented a "new challenge" for the Community competition rules, in what Leon Brittan defined as "new fields of state-aid control".[41]

On these grounds, a controversy arose about the liquidation of EFIM, the third Italian public holding company. The Commission raised the question of the Italian State guarantee on EFIM's debts under art.2362 of the Italian Civil Code ("sole shareholder"), according to which "in the event of insolvency of the company, with regard to the company's obligations arising in the period in which the shares belonged to one single person, the latter must meet unlimitedly".[42] The Commission maintained that since the resources of the State were practically "unlimited", the guarantee provided ex art.2362 was much broader than the one granted to any private owner whose assets were quantifiable.

The issue was dealt with in a meeting held in November 1992 between the Budget Minister Franco Reviglio, the Industry Minister Giuseppe Guarino, and Commissioner Brittan, subsequent to which, on 13th January 1993, the Director General of Competition Klaus Ehlermann wrote to the Italian government:

> "The Commission's absolute impartiality concerning the ownership regime in Member States […] is well known. The Commission's attention will, therefore, focus only on the Italian government's privatization program to the extent it affects the application of competition regulations and, more particularly, state aid".[43]

Hence, from the EFIM case, the Commission's attention shifted to the mechanisms of the entire Italian privatization program. On these grounds, the Commission (where Van Miert had just been appointed to Competition) started an infringement procedure, ex art.93 EEC Treaty, against Italy, concerning the EFIM liquidation plan. The Commission subordinated the solution of the EFIM case to defining a plan that allowed Italy to abolish the effects of art.2362 on state-owned companies.

As Van Miert recalled in his memoirs, Italian public companies benefited from an "indéfendable garantie illimitée d'Etat", thanks to which

40. HAEU, RP 146, Viaggio a Strasburgo e Parigi, 23-24.06.1993.
41. L. BRITTAN, *European Competition policy* ..., op.cit., pp.89 sqq.
42. The article was in force up to 31 December 2003.
43. Archivio storico dell'Iri, Roma (hereafter ASIRI), Direzione Pianificazione e controllo (PC), 256, Nota per il signor Direttore generale, 04.04.1998.

> "tout le monde, y compris les banques privées, était disposé à accorder généreusement des prêts, même à des entreprises publiques déjà virtuellement en faillite […]. On touchait ici à l'essence même du système économique italien, caractérisé par l'emprise des holding publics et leur imbrication totale dans le monde politique et bancaire. Il s'agissait en fait d'un système fermé, 'incestueux'. Mais le gouvernement italien avait été coincé par Leon Brittan et devait dès lors composer. Après des longues négociations, nous avons finalement pu conclure l'accord baptisé Andreatta-Van Miert".[44]

On 25th May 1993, Andreatta sent Van Miert a letter dealing with the ongoing legal dispute with the aim to 'upgrade' to a political level the relations between the Commission and the Italian government regarding the ongoing privatization process. Andreatta reasserted that Italy could not but "recognize entirely the existing obligations", in order to avoid "serious repercussions" on the entire national economy. However, it was the firm intention of the Italian government to provide "the fullest cooperation possible with the Community". Therefore, it was only a matter of finding adequate "technical solutions".[45]

A meeting between Andreatta and Van Miert in Brussels on 2nd June 1993 gave the European Commissioner the opportunity to meet the Italian Minister and to appreciate his commitment. However, in a series of subsequent letters, Van Miert reasserted that "the solution to such problems, and particularly the problems of EFIM" could not prescind "from the immediate and preventive elimination of the unlimited guarantee that the Italian state provides by virtue of art.2362". The Commissioner pointed out the "pre-eminence" of Community law over national law: art.2362 had to be "interpreted and applied" in Italy "in full compliance with the rules of art.92 EEC Treaty", and in this regard, Italy was "in a state of infringement".

The Chief Executive of IRI, Michele Tedeschi, reacted strongly to the "Community's intention to instrumentally use art.2362 by underscoring its 'aid' element". For IRI, it was fundamental to maintain the responsibility of the sole shareholder in order to avoid "facing an immediate and automatic demand to reimburse the debt": IRI would risk an "unmanageable financial crash".[46] Prodi reasserted this when meeting Van Miert on 23rd June: "our position is that the debt we have today must be guaranteed, otherwise we will go immediately into default. This would be a default for 400,000 employees".[47]

On 14th July, during a meeting at the Presidency of the Council of Ministers, the representatives of ENI, IRI, the Treasury and Foreign Affairs all agreed "on the legal unsustainability of the EEC position on art.2362, but also on the need to immediately unblock EFIM's debts". The Director General of the Treasury, Mario Draghi, met the Director General of Competition, Ehlermann, on 20th July to negotiate a tentative

44. K. VAN MIERT, op.cit., pp.80-81.
45. ASIRI, Pratiche Uffici (SE), 1324, Andreatta to Van Miert, 25.05.1993.
46. ASIRI, SE 1324, Michele Tedeschi to Piero Barucci (Minister of the Treasury), 01.06.1993.
47. HAEU, RP 146, Viaggio a Strasburgo e Parigi, 23-24.06.1993.

agreement between the Italian government and the European Commission.[48] The agreement was finally reached after a meeting between Andreatta and Van Miert on 27th July. The final text was sealed by a letter of acceptance by Van Miert on 4th August.

The agreement was articulated in five main points: 1. The Italian government pledged to quantify the level of debt as of 31st December 1993 of the companies transformed into public limited companies, wholly-owned subholdings and of any other company wholly-owned by the Treasury, except for the companies providing public services and those falling under Art. 223 EEC Treaty. In practice, the agreement involved IRI and its wholly-owned companies (then excluding ENI and RAI). Said level would represent the maximum ceiling, above which no further debt would be authorized by the Italian Minister of Treasury. – 2. The Commission recognized the financial responsibility of the Italian State for the debt of companies as per item 1 and for the debt of EFIM under liquidation. – 3. The Italian government pledged to reduce progressively, by the end of 1996, the debt of the companies as per item 1, carrying said debt up to "physiological" levels, i.e. to "acceptable levels for any private investor operating under the conditions of a market economy". The 1996 deadline could be extended by mutual consent of the parties. – 4. Once the physiological levels of debt were reached, the Italian government pledged to reduce its own participation in the companies in item 1. In accordance to Italian legislation, the guarantee of the Treasury on debts of the companies would last until the expiration of the relative contracts. – 5. The Italian government pledged to prepare, in collaboration with the Commission, a Monitoring Plan to allow the fulfilment of the aforementioned points to be verified.

In practice, the Commission recognized most of Italy's requests, and its commitment to maintain its financial responsibility ex art.2362, thus implicitly recognizing that the deactivation of art.2362 could only be done under Italian law. On its part, the Italian government pledged to reduce the debt of public companies by 1996 (however, the accord provided for the possibility of an extension); and subsequently to reduce its participation, directly and indirectly, in such companies.[49]

The Monitoring Plan

A specific Monitoring Plan (point 5) would verify the debt reduction process. In preparation of a meeting between Roberto Rossi from the Ministry of Foreign Affairs and Ehlermann on 14th September 1993 to define the terms of the plan, the DG IV sent a so-called Non-paper containing the Commission's requests.

48. HAEU, RP 305, Iri SpA, CdA del 3 dicembre 1993, Contributi IRI alla definizione degli aspetti applicativi dell'accordo Governo italiano/CEE sulla garanzia implicita ex art. 2362 …, 01.12.1993.
49. ASIRI, SE 1323, Problematiche connesse al completamento del Piano di privatizzazioni dell'Iri. Allegati, January 1996.

Among other things, the Commission asked the Italian government to draft a target plan to cover the three years of the agreement. During said period,

> "the Commission will check the correspondence between the target plan and its actual implementation, and discuss with the Italian authorities any significant deviations […], as well as the measures to correct them […]. The Commission shall moreover be informed of all the single 'special operations' (sales of companies or assets, financing and capital operations, etc.) undertaken in the debt reduction process and in accordance with the target plan, as they may involve State aid".[50]

In Italy, the reactions to the Non-paper were very strong. During a meeting held at the Ministry of Foreign Affairs on 9th September 1993 among the representatives of IRI, ENI and the Ministries involved, the Commission's requests were judged as "inapplicable" by all the participants. Following the meeting, IRI drafted a Memorandum underlining the "broad and serious implications" of the Commission's proposals, and claiming greater flexibility and autonomy. Such requests were then submitted to Brussels, which in large measure accepted them.

Despite these skirmishes, the political climate between Italy and the Commission was cleared up by the mere existence of the agreement. "The Andreatta-Van Miert agreement was a sort of 'bureaucratic obligation', providing the tracks" – Romano Prodi would later recall – "to move ahead".[51]

The meeting between Rossi and Ehlermann on 14th September 1993 was held – according to Rossi's report – "in a climate of openness and cordiality, with a change of atmosphere in the relations with the Commission on the theme of state aid". The Italians pointed out that collaboration with the Commission could not consist in "placing a fundamental aspect of current Italian economic policies under the tutelage of the Commission". The Commission should limit itself to monitoring the purposes of the agreement, which was to reduce the debt, without claiming "to dictate the procedure of our privatizations".[52]

The text of the Monitoring Plan sent by Andreatta to Van Miert reaffirmed the Italian requests for greater flexibility and autonomy. The assessment on the validity of the industrial and/or financial plans would "exclusively be up to the decision-making bodies of the companies in question". In March 1994, after a series of further talks, the Italian permanent representative to the EU transmitted to the Commission an Interpretative Memorandum on the Monitoring Plan, which was followed up by an official letter from Van Miert, thus sealing the agreement with the Italian government, while meeting some further requests by IRI. Hence, IRI went ahead with the Target Plan to reduce the debt over the three-year period 1994-1996.[53]

50. ASIRI, SE 1324, Monitoring Programme concerning the process of debt reduction, restructuring and privatisation of the public undertakings in Italy (Non-paper), 14.09.1993.
51. Author's interview with Romano Prodi, 15.12.2011.
52. ASIRI, SE 1324, Intesa tra Governo italiano e Commissione CE su privatizzazioni e risanamento degli Enti S.p.A. Riunione con i rappresentanti della Commissione in merito allo schema di monitoraggio, 14.09.1992.
53. HAEU, RP 295, IRI SpA, Previsioni economico-finanziarie per il triennio 1994-1996, March 1994.

The monitoring of the agreement

IRI's effort to privatize, divest, financially restructure and reduce its debt was indeed enormous over the three-year monitoring period. The debt of IRI and its wholly-owned companies was reduced from 55,450 billion liras at the end of 1993 to 39,600 billion liras at the end of 1995. The process temporarily came to a halt at the end of 1995, due to political difficulties in privatizing STET. The delay in the establishment of a specific telecommunications sector authority caused an extension of the agreement by six months, starting January 1997.

On 27th May 1997, in a report sent to the Treasury Minister Ciampi, the Chief Executive of IRI, Tedeschi, released an update on the situation. Concerning IRI Spa, Italy would "fully comply with the commitment taken at Community level". As for the operating companies monitored, their debt exposure had been substantially reduced: from about 42,000 billion liras in 1993 it was expected to reach about 14,400 billion as of 30 June 1997. The second part of the report was written by the legal department of IRI. It may be useful to dwell a little upon this document, since, while dealing with the legal content of the Andreatta-Van Miert agreement, the report went inevitably to its 'political' core. The agreement aimed at the deactivation of art.2362 regarding IRI, while the reduction of State shares in former state-owned companies transformed into joint stock companies, "may be seen more as a political commitment than a legal requirement". The logic of the Brussels executive was to question

> "the effects of the civil law regulation on the matter – considering the abnormal debt levels – and not art.2362 as such […]. The agreement, therefore, is exclusively legitimated by establishing that the pathological amounts of debt incurred – in the past – by some companies of the Group may be considered as 'aid'".

Once this debt level was reduced, the ownership of the group or individual companies would become irrelevant in terms of Community regulations on state aid. The issue was clearly political: "it is necessary to keep in mind that the policy related to state shareholdings in the capital of companies is still a prerogative of national economic sovereignty. The reduction of state participation in a solvent company cannot be imposed by the European Commission, on penalty of its referral to the Court of Justice due to infringement of the regulations on equal treatment among companies (art.222 EEC)".[54]

IRI's new top management appointed in June 1997 was charged by the Treasury to transfer the remaining shareholding and liquidate the company within three years, by 2000. On 10th July, IRI's new Chairman, Gian Maria Gros-Pietro, sent a financial update to the Treasury Minister Ciampi. The data underscored "full compliance with the commitment undertaken at Community level" regarding both IRI and the other monitored companies. By virtue of the ongoing privatizations, IRI's debt would be "down to zero" by year end.

54. ASIRI, PC 256, Tedeschi to Ciampi, 27.05.1997; Allegato II Parte, Accordo Andreatta-Van Miert (emphasis in the original).

On 5th August 1997 in a letter to Ciampi, Van Miert expressed "his own, as well as the Commission's deep appreciation of the efforts made by the Italian government to privatize IRI-owned companies". However, he recalled that

> "the agreement explicitly included a further condition concerning the abolition of the guarantee set forth in art.2362 of the Italian Civil Code, which was to be achieved through the (albeit partial) privatization of IRI, or through liquidation".

According to IRI, instead, the purpose of the agreement had been "fully achieved" and the agreement itself could be considered as "fully complied with".

The combative Commissioner made a further attempt. On 10th November 1997 Van Miert wrote a letter to Ciampi acknowledging the results attained, but reminding the Italian government of its commitment to abolish the guarantee ex art.2362:

> "I understand that the Italian government intends to proceed with the liquidation of IRI within a three-year period. Although aware of the underlying motivations and agreeing with them, unfortunately, I must advise you that such a plan cannot be considered in compliance with the agreement, since it would imply a three-year extension of the guarantee ex art.2362".

In his reply on 30th December 1997, Ciampi firmly refused to meet the Commission's peremptory deadline and considered the agreement terminated in that it had been honoured by Italy:

> "In confirming the Italian government's satisfaction – which I know is shared by the Commission – for the conclusion of the monitoring phase due to the achievement of the physiological debt level by IRI, I wish to reassure you of the Italian government and my own strong personal will to respect the agreement in question".

Ciampi informed Van Miert that Italy would thus "firmly oppose any legal proceeding, given the extraordinary restructuring efforts made by the Italian government, which have been extremely successful and in compliance with the agreement entered into".[55]

Ciampi's letter officially concluded the Andreatta-Van Miert 'affair'.

Conclusions

The Andreatta-Van Miert agreement represented the "tracks", as Romano Prodi defined them, along which the Italian privatization process – and especially IRI's – would take place. It provided a "bureaucratic obligation" which enabled Italy to suspend the ongoing legal proceedings with the European Commission on the matter of breaching Community law while pursuing privatization. Furthermore, the agreement provided a time schedule and a formal reference framework for privatization. In practice, it contributed to organize a process which was an exclusively national po-

55. ASIRI PC 256, Correspondence between Gros-Pietro and Ciampi, and Ciampi and Van Miert.

litical prerogative, the features and results of which would be affected by the domestic economic and political situation.

As pointed out in the IRI report of May 1997 on the legal content of the agreement, the "reduction of state participation in a solvent company cannot be imposed by the European Commission". More generally, the policy related to state shareholdings in the capital of companies remained a "prerogative of national economic sovereignty".

As Sabino Cassese has observed, privatization was a tool "to reinforce the state and not the market".[56] According to Nicola Bellini, the purpose of privatization was similar to that of nationalization, that is, "the state's building of a new phase of indigenous capitalism".[57] The same occurred throughout the world, despite different ways and outcomes. A provisional appraisal of the experience of privatization, based on different results in different countries, has led to downsizing the "unbridled enthusiasm for privatization" of those years, as Joseph Stiglitz wrote: "Privatization has had some successes, but it has also been marked by dramatic failures and disappointment"; similarly, successes and failures can apply to public property.[58]

The outcome of Italy's experience should thus be assessed within this framework and for its peculiarity.[59]

It is evident, nonetheless, that privatization across the European Community was affected by the launching of the Single Market and Monetary Union, which was flanked by a new dynamism from the European Commission. Despite the numerous breaches and legal proceedings that this entailed, the renewed rigor in applying Community discipline on competition was made possible in so far as it complied with domestic interests: the creation of a Single Market and its implications in terms of liberalization and market integration were perceived as tools to recover national economic efficiency at a time of globalization, technological progress and financial crisis.

It was this context which represented a *vincolo esterno* and which 'tied' Member States to the Community framework. The perception was that Europe needed a new economic 'organization' and a 'public hand' on a regional scale, in order to foster growth and structural change at the national level. This context also enabled the Commission to perform – through competition policy as well as other policies – a step forward in the further definition of its 'regulatory role', as well as to acquire a new visibility and legitimation. The origin of this Community framework is fundamental in understanding the nature of European Member States today. The national dimension and the Community dimension do not exclude – but complement – each

56. S. CASSESE, *Stato e mercato dopo privatizzazioni e 'deregulation'*, in: *Rivista trimestrale di diritto pubblico*, 2(1991), p.386.
57. N. BELLINI, *The Decline of State-Owend Enterprise and the New Foundations of the State-Industry Relationship,* in: P.A. TONINELLI (ed.), *The Rise and Fall of State-Owned Enterprises in the Western World*, Cambridge University Press, Cambridge, 2000, p.34.
58. J.E. STIGLITZ, *Forward*, in: G. ROLAND (ed.), *Privatization : successes and failures*, Columbia University Press, New York, 2008, p.IX.
59. On said results, that cannot be dealt with here, see the discussion in P.A. MORI (ed.), *Privatizzazioni in Italia. Forum of SIE*, in: *Rivista italiana di economia*, 9(2004).

other, and their mutual entanglement has often caused 'unexpected' consequences, once such mechanisms of change were activated.

As some authors have concluded, privatization "was not a EU policy but, paradoxically, an unintended consequence of the process of EU integration, since, though privatization is distinct from liberalization and deregulation, in practice, many EU governments used privatization as a tool to facilitate and accelerate liberalization in the face of European legislation".[60]

The transformation of the 'public hand' in Western Europe and the consensus that came about on the deregulation paradigm were not rooted in a state or market, public or private, ideological divide. Indeed, the discontent towards public enterprises and their alleged inefficiency was not as widespread or convinced as generally claimed: "there was no 'crisis' in the public perception of their activities".[61] The very limited role played by ideological factors is confirmed by the outcome of the privatization wave in the 1990s, as only a few European countries fully privatized strategic sectors such as energy, telecommunications, and transport, while in most countries the majority of assets in strategic sectors (particularly in energy) are still publicly owned. This has led other authors to conclude that the large scale privatization of the 1990s "did not alter the prevailing corporate governance structures in privatized firms". At the turn of the 21st century, we find European governments "firmly controlling (by voting rights and golden shares) a large part of privatized companies, especially in strategic sectors". It was thus "the urge to meet the Maastricht criteria" which acted as a major driver in the privatization decision, "as financially distressed governments have been more eager to privatize".[62]

Within this general framework, Italy's case was no exception, even though it showed some peculiarities related to the considerable losses accumulated by public holdings, and to the dramatic coincidence of the twin crises of public finance and the political system, both accelerated by the end of the Cold War. The Andreatta-Van Miert agreement was the only case in which an agreement between the Commission and a Member State ruled the timing and extent of privatization. All the rest was left out. The fate of industrial know-how, strategic business culture, and international scope which IRI had – for good and bad – represented in the history of the Italian economy, and which was then entrusted to the 'market', was still unknown at the time. There was no European 'constraint' on these issues: subsequent decisions and their outcome would have been a matter of national choices, just like they were in the rest of Europe.

60. J. CLIFTON, D. DÍAZ-FUENTES, F. COMÍN, *Privatizing Public Enterprises in the European Union 1960-2002: Ideological, Pragmatic, Inevitable?*, in: *Journal of European Public Policy*, 5(2006), pp.752-753.
61. J. CLIFTON, F. COMÍN, D. DÍAZ FUENTES, *Privatisation in the European Union* ..., pp.99-100.
62. B. BORTOLOTTI, V.MILELLA, *Privatization in Western Europe. Stylized Facts, Outcomes, and Open Issues*, Fondazione Enrico Mattei, Nota di Lavoro 124(2006), p.1.