

TO THE KIND ATTENTION OF:

Mrs. Teresa Ribera

EXECUTIVE VICE-PRESIDENT

Clean, Just and Competitive Transition

EUROPEAN COMMISSION

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CC: MEDIOBANCA

12 June 2025

Dear Vice-President Ribera,

**Subject: DG Comp Communication dated 7 February 2025 – Illegality of State
Aid to Banca Monte dei Paschi di Siena**

Also in my capacity as a shareholder of the Italian banks Banca Monte dei Paschi di Siena (MPS) and Mediobanca through the company Bluebell Partners Ltd. – in addition to being publicly recognized as a knowledgeable expert on the complex issues that have affected MPS from 2012 to the present, and which I have helped bring to light – I am writing to express serious concerns regarding the legitimacy of euro 7,5 billion of State aid received by MPS in the period 2017-2022, which are now being used to attempt a hostile takeover of a competing bank (Mediobanca).

More specifically, I refer to my communications of 12 January 2025 (**Annex 23.19**) and 2 February 2025 (**Annex 23.22**), personally addressed to you, and to the subsequent response from the European Commission dated 7 February 2025 (**Annex 23.22**), signed by DG COMP official Karl Soukup, Acting Deputy Director-General.

As is well known, starting June 2019, the undersigned has repeatedly reported to the European Commission the unlawful and abusive nature of euro 7,55 billion in State aid granted to Banca Monte dei Paschi di Siena (“**MPS**” or the “**Bank**”) in 2017, 2020, and 2022, namely:

- euro 5,4 billion capital contribution through the subscription of newly issued shares in the form of a “precautionary recapitalization” executed in 2017 (“**Measure 1**”): see my communications to the Commission dated 9 June 2019 (**Annex 23.1**), 2 July 2019 (**Annex 23.3**), 25 July 2019 (**Annex 23.5**), 2 January 2020 (**Annex 23.7**), 13 December 2021 (**Annex 23.9**), 16 January 2022 (**Annex 23.11**), 12 January 2025 (**Annex 23.19**), and 2 February 2025 (**Annex 23.21**)
- euro 529 million capital contribution through the sale of a portfolio of non-performing loans (NPLs) to a wholly State-owned entity (AMCO) at a price incorporating a premium above fair value in 2020 (“**Measure 2**”): see my communications to the Commission dated 2 January 2020 (**Annex 23.7**) and 29 May 2022 (**Annex 23.13**)
- euro 1.6 billion capital contribution through participation in a euro 2,5 billion rights offering in 2022 (“**Measure 3**”): see my communications to the Commission dated 29 May 2022 (**Annex 23.13**), 13 September 2022 (**Annex 23.14**), 18 September 2022 (**Annex 23.15**), 13 November 2022 (**Annex 23.16**), 16 November 2022 (**Annex 23.18**), and 2 February 2025 (**Annex 23.21**)

Despite the numerous submissions - constantly adjourned, integrated and accompanied by literally hundreds of supporting documents - the Commission has limited itself to polite acknowledgements of receipt, namely on 27 June 2019 (**Annex 23.2**), 23 July 2019 (**Annex 23.4**), 21 August 2019 (**Annex 23.6**), 19 February 2020 (**Annex 23.8**), 13 January 2022 (**Annex**

23.10), 3 February 2022 (Annex 23.12), 7 November 2022 (**Annex 23.17**), 21, 23, and 24 January 2025 (**Annex 23.20**), and 7 February 2025 (**Annex 23.22**), through which:

- (i) it simply acknowledged receipt of the submissions.
- (ii) it failed to provide a substantive reply, merely referring in each instance to the previous communication in a skilful yet inconclusive chain of cross-references.
- (iii) it effectively stated that it does not consider itself obliged to treat the reports as a formal complaint within the meaning of Article 24(2) of Council Regulation (EU) 2015/1589, and has limited itself to registering the undersigned's communications as market information

As specified in my most recent communication of 2 February 2025 (Annex 23.22), the situation now appears all the more serious and urgent, given that MPS, on 24 January 2025, announced a hostile takeover bid for Mediobanca S.p.A. (Annex 15.203). In practice, absent immediate (albeit belated) intervention by the Commission, MPS would be allowed to use State aid obtained illegally to acquire a competitor.

All of this occurs with the Commission's full and documented awareness, which - nonetheless - appears to have arbitrarily decided to abdicate its responsibility to preserve competition in the single market.

This is, quite evidently, an unacceptable situation.

Returning to the Commission's most recent communication of 7 February 2025 (**Annex 23.22**), I find myself once again compelled to censure its contents, as they are misleading, factually inaccurate, and clearly indicative of a deliberate intent to support an unlawful situation which, by its very mandate, the Commission should be working to prevent.

In its letter dated 7 February 2025, the Commission used three main ill-fated arguments:

- *“**First**, we would like to recall that, according to Article 24(2) of Council Regulation (EU) 2015/1589, formal complaints can only be submitted by interested parties whose own interests might be affected by the measure, such as competitors or trade associations. You have not demonstrated to be an interested party”*

- (Annex 23.22): instead of addressing the substantive issues raised by the undersigned, the Commission hides behind the formal argument of lack of standing. Moreover, the Commission appears unaware that it “*should be able, on its own initiative, to examine information on unlawful aid, **from whatever source**, in order to ensure compliance with Article 108 TFEU, and in particular with the notification obligation and standstill clause laid down in Article 108(3) TFEU, and to assess the compatibility of an aid with the internal market*” (COUNCIL REGULATION (EU) 2015/158 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, “**Procedural Regulation**”)
- The **second** argument consists in stating that the undersigned, “*by the letter of 12 January 2025,*” would have “*essentially repeat[ed] the information already provided by letters of 9 June 2019, 2 July 2019, 25 July 2019, 2 January 2020, 13 December 2021 and 16 January 2022. The Commission services replied to those letters by letters of 27 June 2019, 23 July 2019, 21 August 2019, 19 February 2020, 13 January 2022 and 19 January 2022*” to which the Commission would have “*replied to those letters by letters of 27 June 2019, 23 July 2019, 21 August 2019, 19 February 2020, 13 January 2022 and 19 January 2022*”, thus “*regarding your claim on the illegality of the aid to MPS, the Commission services consider having addressed it in substance in its previous letters mentioned above*” (Annex 23.22): it seems the Commission is citing its own responses without having actually read their content, which entirely avoids any substantive assessment. In a sort of ‘broken telephone’ game, each reply from the Commission refers back to the previous one, which in turn refers to the one before that - ultimately ending with the first response, which says nothing at all (and which, in any case, could not possibly have taken into account all the information submitted thereafter). Rather than genuine responses, these amount to little more than mockeries.
 - The **third** argument concerns the fact that, when the undersigned submitted further evidence relating to two ongoing criminal proceedings regarding the falsification of MPS’s financial statements - aimed at concealing MPS’s state of insolvency (which would have

disqualified it from receiving State aid in the form of “*precautionary recapitalization*”) - and the possible fraudulent access to State aid in 2017 through the commission of fraud against the State, the Commission “*observe that they refer again to ongoing judicial proceedings and, as such, should be considered sub-judice. Accordingly, these additionally submitted documents cannot be used for assessing whether there may be a violation of the State aid rules to be addressed, in which case the Commission may decide to investigate the case in the light of Article 12(1) of Council Regulation (EU) 2015/1589. Those documents do not therefore modify the position of the Commission services as regards your claim that the approval of the State aid granted to MPS in 2017 was based on false information*” (Annex 23.22): the Commission once again relied on a specious line of argument, bordering on bad faith.

Firstly, the mere fact that criminal proceedings are ongoing in relation to the factual circumstances underlying the State aid granted to MPS should have (more accurately: should already have) prompted the Commission to initiate its own inquiry within the scope of its competence.

Secondly, the possible establishment of criminal liability (e.g. fraud against the State) is a *quid pluris* - and, in any case, an entirely separate and additional matter - distinct from the Commission’s mandate, which is to assess the legality of the aid. Such an assessment does not require proof of *mens rea* or criminal intent and the powers of Commissions are not conditional to the findings of the judicial authority.

And finally, the Commission pretends not to know that “*for reasons of legal certainty it is appropriate to provide for a period of limitation of 10 years with regard to unlawful aid, after the expiry of which no recovery can be ordered*” and that “*the powers of the Commission to recover aid shall be subject to a limitation period of 10 years*” (Procedural Regulation). By improperly hiding behind the existence of ongoing criminal investigations, the Commission is in practice ensuring impunity through the mere passing of limitation periods. Should it emerge - as the undersigned has reason to fear - that the Commission has not even interrupted the

limitation period, despite having the power to do so¹, this would constitute the smoking gun evidence of bad faith: on the one hand invoking (however inappropriately) the existence of pending criminal investigations, while on the other failing to interrupt the limitation period in order to await their outcome- an outcome which, in any case, is irrelevant to the decision the Commission must make regarding the possible recovery of unlawful State aid.

It is also worth recalling that, as a further development since the EC letter dated 7 February 2025, on 6 June 2025 the Preliminary Investigation Judge ordered that former MPS CEO Alessandro Viola, former Chairmen Alessandro Profumo and Massimo Tononi, as well as the officer in charge of financial reporting, Arturo Betunio, stand trial - with the first hearing scheduled for 16 October 2025. They are to face charges of false corporate communications, market manipulation, and prospectus fraud, in connection with the concealment of euro 7,55 billion in loan losses as of 31 December 2015. These are the very losses that were subsequently covered through the 2017 State aid measures, and whose concealment served to mask the fact that, in 2017, MPS was technically insolvent.

Once again, provided that there is no overlapping between the decision to be taken by a judicial authority called to ascertain a potential breach of the criminal code and the decision to be taken by the Commission called to investigate the potential breach of the Treaty, this further development should come as an additional element to prompt the DG Comp to open a formal investigation and not as an frivolous excuse to justify your failure to fulfil your own obligations.

¹ “**Limitation period for the recovery of aid.** The powers of the Commission to recover aid shall be subject to a limitation period of 10 years. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union. Any aid with regard to which the limitation period has expired shall be deemed to be existing aid” (Procedural Regulation)

In light of the facts set out above, the undersigned respectfully requests (or rather: demands) that the Commission finally fulfil its duties - duties it has thus far unreasonably failed to discharge - by taking the following actions:

- (i) immediately interrupt the 10-years limitation period;
- (ii) initiate a formal investigation into the unlawful and abusive nature of the State aid granted to MPS in 2017, 2020, and 2022, as set out in the Appendix A
- (iii) refrain from authorizing the MPS-Mediobanca under the Commission merger control responsibility² until the investigation (ii) is closed – I take for granted that anybody acting in good faith would not hesitate to recognise that the Commission has the obligation to review and approve a transaction which is predicated on euro 7,5 billion of unlawful State Aid.

Trusting that the Commission will finally act in accordance with its obligations, I, in turn, reserve the right to consider all available options should it choose to disregard them - thereby allowing one bank to acquire another using State aid obtained unlawfully, which truly represents the height of irony for DG COMP: **without the euro 7,5 billion in allegedly unlawful State aid, MPS would not have had the financial capacity to launch a hostile public exchange offer for Mediobanca's shares. The aid has therefore not only distorted market competition in a general sense but has also directly enabled a targeted and strategic attempt by MPS to acquire control over a competitor (Mediobanca) - an action it would likely have been unable to pursue in the absence of such support.**

I hope it is clear to all that we are living through an extremely delicate period in international trading relations.

² Council Regulation (EC) No 139/2004 of 20 January 2004

Given the inherently cross-border nature of the financial industry, I believe the Commission's inaction - despite my repeated and well-documented reports - poses a serious threat to its credibility.

Should I conclude that the Commission is, for reasons unknown, abdicating its duty to uphold the Treaty's provisions on competition (state aid and control merge), I will review all available options and consider it my responsibility to make this submission public, share this letter with every single Member of the European Parliament and inform any government currently engaged in tariff negotiations with the European Commission, as well as with any other interested party - starting immediately, of course, with Mediobanca. I trust that by now it should also be clear to you that I am not prepared to be taken for a fool nor to tolerate arbitrary conduct by those who are entrusted with the duty of upholding the rules: **the arbitrariness of an authority is the tomb of democracy.**

*

This communication is also being transmitted, for their respective assessments, to the following European Commissioners:

1. **Commissioner Maria Luís Albuquerque**, whose role is to safeguard financial stability, ensure better access to finance for EU businesses, and create improved opportunities for citizens to enhance their financial security—all of which are directly jeopardised by the circumstances described in this letter.
2. **Commissioner McGrath**, whose mandate is to uphold and strengthen the core values and principles that underpin our Union, our societies, and our economies, and to ensure that citizens can have confidence in state power being exercised fairly and objectively. This responsibility necessarily includes safeguarding European citizens against the inaction of those Commissioners who may fail to adhere to the spirit and letter of their mandate.

3. **Commissioner Maroš Šefčovič**, whose task is to design and implement a free and fair-trade policy that enables Europe to meet its goals in competitiveness, security, and sustainability by supporting a level playing field for businesses. His perspective is relevant in assessing what credibility the Commission can maintain if, when confronted with overwhelming evidence, it refuses to open a formal investigation and instead offers frivolous or procedural arguments to avoid substantive action:

and finally:

4. **President Von-Der-Leyen**, in her capacity as guarantor of the integrity, coherence, and credibility of the Commission's institutional action. In light of the seriousness of the facts presented and the DG Comp apparent reluctance to engage with the matter on its merits - despite overwhelming documentation - her oversight is essential to ensure that the European institutions act in line with their mandate to serve the public interest, uphold Union law, and preserve citizens' trust in the rule of law and institutional accountability: **the refusal by DG Comp to open a formal investigation into the facts presented (see Appendix A) constitutes a serious affront to democracy.**

Awaiting your prompt response, I remain,

Yours sincerely,



Giuseppe Bivona

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APPENDIX A

FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED UNLAWFUL STATE AID OR MISUSE OF AID

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

First Name: * Giuseppe
Surname: * Bivona
Address line 1: * 5 Christchurch Terrace
Address line 2:
Town/City: * London
County/State/Province:
Postcode: * SW34AJ
Country: * United Kingdom
Telephone:
Mobile Telephone: +(44) 7768115117
E-mail address: * gbivona@bluebellpartners.com
Fax:

2. I am submitting the complaint on behalf of somebody (a person or a firm)

No

If yes, please also provide the following information:

Name of the person/firm you represent*:

Registration nr. of the
entity:

Address line 1: *

Address line 2:

Town/City: *

County/State/Province:

Postcode: *

Country: *

Telephone 1:

Telephone 2:

E-mail address: *

Fax:

Please attach proof that the representative is authorized to act on behalf of this person/firm.*

3. Please select one of the following options, describing your identity*

- a) Competitor of the beneficiary or beneficiaries ☐
- b) Trade association representing the interests of competitors ☐
- c) Non-governmental organisation ☐
- d) Trade union ☐
- e) EU citizen ☒
- f) Other, please specify

It should be noted that the undersigned, Giuseppe Bivona, through the company Bluebell Partners Ltd., in which he holds a 50% stake, is a shareholder of Banca Monte dei Paschi di Siena S.p.A. ("MPS") and of Mediobanca S.p.A. ("Mediobanca")

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent or is otherwise likely to have a specific effect on your/its situation. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 24(2) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

This submission concerns the receipt by MPS of euro 7,5 billion in allegedly unlawful State aid - a situation that significantly affects the Complainant for the following reasons:

1. Distortion of competitive conditions in the banking sector

As a consumer and user of banking services, the undersigned is harmed by the distortion of competition.

MPS operate in the same market and are direct competitors. The injection of euro 7,5 billion in allegedly unlawful State aid would give MPS a substantial and unjustified competitive advantage. Such aid distorts market dynamics by allowing MPS to operate under more favourable capital and liquidity conditions than would otherwise be possible under standard market rules. As a result, MPS is able to offer more attractive terms to clients, assume higher levels of risk and expand its market share - advantages that are not available to Mediobanca or other financial institutions operating without State support.

2. Facilitation of the hostile takeover offer on Mediobanca

As an investor, the undersigned is harmed by the market distortion caused by the use of illegal state aid to launch a hostile takeover bid for Mediobanca.

Without the euro 7,5 billion in allegedly unlawful State aid, MPS would not have had the financial capacity to launch a hostile public exchange offer for Mediobanca's shares.

The aid has therefore not only distorted market competition in a general sense but has also directly enabled a targeted and strategic attempt by MPS to acquire control over a competitor (Mediobanca) - an action it would likely have been unable to pursue in the absence of such support.

3. Risk to Mediobanca's shareholders

As previously mentioned, the undersigned, through the company Bluebell Partners Ltd., is a shareholder of Mediobanca.

Should the offer proceed and be accepted and should the DG Comp subsequently determine that State aid must be recovered, the shareholders of Mediobanca - who would have become shareholders of MPS - would face significant financial risk. This would seriously undermine the transparency and fairness of the takeover process, jeopardize the financial interests of Mediobanca's shareholders, and could lead to major instability in MPS's ownership structure and market valuation.

4. Broader market stability

The undersigned, as a taxpayer, is exposed to the systemic risk that MPS introduces into the system.

MPS (and Mediobanca) is classified as "*Significant Institutions*" under the European banking supervision framework. As such, the potential systemic implications of this situation - should the takeover proceed and the unlawful aid later be recovered - could extend beyond the two banks involved, posing broader risks to financial stability in the euro area.

4. Please select one of the following two options*

☒ Yes, you may reveal my identity

☐ No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points 5 and 6 cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential

- a) Country: Italy
- b) If known, specify which institution or body granted the alleged unlawful State aid: Central government

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

- a) Please provide a description of the alleged aid and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

Measure 1	<ul style="list-style-type: none">- euro 5,4 billion capital contribution through the subscription of newly issued shares³.- up to of euro 15,0 billion guarantee for liquidity support⁴.
Measure 2	<ul style="list-style-type: none">- euro 529 million capital contribution, by means of the sale of a portfolio of non-performing loans (NPLs) to a wholly State-owned

³ See European Commission - Decision C (2017)4690 (July 4, 2017) (DG Comp, Annex 15.108)

⁴ See European Commission EC Decision (2016) 9032 (December 29, 2016) (DG Comp, Annex 15.221)

	entity (AMCO) at a price incorporating a premium above fair value.
Measure 3	- euro 1,6 billion capital contribution through the subscription into a euro 2,5 billion Rights Offering.

b) For what purpose was the alleged aid given (if known)?

Measure 1	<p>- <i>Measure 1</i> was given as a “<i>precautionary recapitalization</i>” under Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive or “BRRD”), pursuant to the exemption under Article 32(4)(d).</p> <p>However, based on new information not available at the time of the European Commission’s authorization (July 4, 2017), it appears that the aid was used to cover hidden losses and restore solvency.</p>
Measure 2	- <i>Measure 2</i> was not notified to the DG Comp as a State aid. It appears that the aid functioned as a covert subsidy to cover hidden losses on impaired loans.
Measure 3	- <i>Measure 3</i> was not notified to the DG Comp as a State aid. It appears that the aid was used to cover a capital shortfall.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

Measure 1	- euro 5.390.046.322,30 of which (i) euro 3.854.215.456,30 through the subscription of newly issued shares in the primary market and (ii) euro 1.535.830.866,00 through the completion of an Exchange Offer in the secondary market.
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	<p>As a result of <i>(i)</i> and <i>(ii)</i>, the State - through the Ministry of Economy and Finance (the “MEF”) - became MPS controlling shareholder with a 68,24%⁵ participation.</p> <ul style="list-style-type: none"> - at least euro 11.000.000.000,00, through the issuance of State guaranteed bonds.
Measure 2	<ul style="list-style-type: none"> - euro 529 million, corresponding to the difference between the price paid to MPS by a fully State-owned company (AMCO) for the purchase of a portfolio of non-performing loans (NPLs), and the fair market value of those assets.
Measure 3	<ul style="list-style-type: none"> - euro 1,6 billion, reflecting the State’s pro-rata subscription in the euro 2,5 billion Rights Offering conducted in 2022, based on its 64,23% ownership stake acquired through <i>Measure 1</i>.

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

Measure 1	- MPS
Measure 2	- MPS
Measure 3	- MPS

MPS is a joint-stock company incorporated under the laws of Italy, with registered office in Piazza Salimbeni, 3, Siena, registration number with the Companies’ Register of Arezzo - Siena and Tax Code no. 00884060526.

MPS is also registered in the Bank Register held by the Bank of Italy under number 5274 and, as parent company of the Monte dei Paschi di Siena Banking Group (the “**MPS Group**”), in the Register of Banking Groups under number 1030.

MPS’s share capital is equal to Euro 7.453.450.788,44 (*capitale sociale*) as of December 31, 2024 (**MPS, Annex 9.56**). MPS shares are admitted to trading on Euronext Milan.

⁵ Prior to *(i)* and *(ii)*, the MEF was already a shareholder of MPS with a 4.05% stake, which was also acquired as part of previous State interventions

MPS is the fourth largest Italian bank with a total balance sheet of euro 122 billion, risk-weighted assets (“RWA”) of euro 48,3 billion, 1.6727 employees and 1.312 branches (**MPS, Annex 9.56**). According to MPS itself, *“founded in 1472, Banca Monte dei Paschi di Siena is the world’s oldest bank still in operation. Today it leads one of the major Italian banking groups **with significant market shares in all the areas of business in which it operates**. The Montepaschi Group is active across Italy and in the major international financial markets with operations centred around traditional retail and commercial banking services and with a particular focus on households and small and medium enterprises. The Group operates in all key business areas: **leasing, factoring, corporate finance and investment banking**. The insurance-pension sector is covered by a strategic partnership with AXA while asset management activities are based on the offer of investment products of independent third parties. The Group combines traditional services offered through its network of branches and specialised centres with an innovative self-service and digital services system enhanced by the skills of the network of financial advisors through **Widiba Bank**. Foreign banking operations are focused on supporting the internationalisation processes of corporate clients in all major foreign financial markets”* (MPS, Annex 10.181).

MPS has been facing financial difficulties for at least fifteen years, recording cumulative losses of euro 18,1 billion between 2009 and 2024. During the same period, it has received substantial State Aid, totalling euro 13,4 billion - euro 7,5 billion of which was granted under *Measures 1, 2, and 3*, which are the subject of the present submission:

FY	Profit (Loss) (euro, million)	State aid (euro, million)	EC Decision	Other
2009	220,10	1.900	Case N648/08 ⁶	c.d. ‘Tremonti Bond’
2010	985,50			
2011	(4.694,30)			
2012	(3.170,30)			
2013	(1.439,10)	4.000	C(2013) 8427 ⁷	c.d. ‘Monti Bond’
2014	(5.342,80)			
2015	388,10			
2016	(3.241,10)		C(2016) 9032 ⁸	euro 15 billion liquidity support

⁶ Recapitalisation measures in favour of the financial sector in Italy, Case N 648/08, as modified by decision in Case N 97, OJ C 88, 17.4.2009.

⁷ European Commission Decision C(2013) 8427 final (November 27, 2013) (**DG Comp, Annex 15.16**)

⁸ European Commission Decision C(2016) 9032 (December 29, 2016) (**DG Comp, Annex 15.221**)

2017	(3.502,30)	5.400 (<i>Measure 1</i>)	C(2017) 4690 ⁹	
2018	278,60			
2019	(1.033,00)		C(2019) 6525 ¹⁰	1 st Amendment of commitment under C(2017) 4690
2020	(1.689,00)			
2021	309,50	529 (<i>Measure 2</i>)		
2022	(204,70)	1.600 (<i>Measure 3</i>)	C(2022) 5536 ¹¹	2 nd Amendment of commitment under C(2017) 4690
2023	2.051,10			
2024	1.950,80			

Total	(18.132,90)	13.429,00
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MPS's largest shareholder is the MEF with a 11,73% stake. The other significant shareholders are Delfin S.a.r.l.¹² (9,86%), Gruppo Francesco Gaetano Caltagirone (9,96%), Banco BPM S.p.A. (5,0%), and ANIMA Holding S.p.A. (3,99%)¹³.

On January 24, 2025, MPS launched an unsolicited exchange offer ("OPS") to Mediobanca's shareholders, soliciting them to tender all their Mediobanca shares in exchange for newly issued MPS shares (**Annex 10.174**).

On January 28, 2025, Mediobanca's Board rejected the offer and issued a press release describing it as hostile, lacking any industrial or financial rationale.

The Board cited the difficulty in assessing the intrinsic value of MPS shares, given that the Bank's net equity is burdened by substantial deferred tax assets, non-performing loans (NPLs), and significant litigation risks. Consequently, the offer was deemed strongly value-destructive (**Mediobanca, Annex 15.222**).

⁹ European Commission Decision C(2017) 4690 (July 4, 2017) (**DG Comp, Annex 15.108**)

¹⁰ European Commission - Decision C(2019) 6525 final (September 2, 2019) (**DG Comp, Annex 15.218**)

¹¹ European Commission - Decision C(2022) 5536 final (August 2, 2022) (**DG Comp, Annex 15.212**)

¹² Del Vecchio family

¹³ As of MPS AGM on April 17, 2025

On April 17, 2025, MPS shareholders' meeting approved the capital increase in support of the OPS for Mediobanca shares, with the decisive votes in favour cast by MEF, Delfin, Caltagirone, BPM, and Anima, which together hold 40,5% of MPS share capital.

Moreover, Mediobanca noted that the significant cross shareholdings of Delfin and Caltagirone in Mediobanca,¹⁴ MPS¹⁵ and Italian insurer Assicurazioni Generali (of which Mediobanca is also a significant shareholder)¹⁶ (**Mediobanca, Annex 15.222**).

e) To your knowledge, when was the alleged aid granted?

Measure 1	<ul style="list-style-type: none"> - August 10, 2017: euro 3.854.215.456,30 (MPS, Annex 10.95), - November 24, 2017: euro 1.535.830.866,00 (MPS, Annex 10.148). - January 25, 2017: MPS issued two State guaranteed bonds for an aggregate amount of euro 7,0 billion, with maturities January 20, 2018, and January 25, 2020. - March 15, 2017, the Bank issued a new State guaranteed bond for an amount of euro 4,0 billion, with a maturity of March 15, 2020 (DG Comp, Annex 15.108)
Measure 2	<ul style="list-style-type: none"> - December 1, 2020, date of completion of the sale of the NPLs portfolio to AMCO
Measure 3	<ul style="list-style-type: none"> - November 4, 2022, date of completion of the Rights Offer

f) Please select one of the following options:



According to my knowledge, the State aid was not notified to the Commission.

Measure 1	<ul style="list-style-type: none"> - <i>Measure 1</i> was notified to DG COMP and approved under EC Decision C(2017) 4690 final on July 4, 2017 “<u>based on the available information</u>” (DG Comp, Annex 15.108, p. 25).
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¹⁴ Caltagirone and Delfin own respectively 7,66% and 19,81% of Mediobanca (**Mediobanca, Annex 15.233**).

¹⁵ Caltagirone and Delfin own respectively 9,96% and 9,86% of MPS, part of which they acquired from the Italian government in November 2024 (**II Sole24Ore, Annex 14.53**)

¹⁶ Caltagirone and Delfin own respectively 6,82% and 9,93% of Assicurazioni Generali while Mediobanca owns 13,1% (**II Sole24Ore, Annex 14.54**)

	<p>However, it appears that the approval was based on incorrect information, which could render <i>Measure 1</i> equivalent to State aid that was not properly notified to the Commission.</p> <p>Aid approved by the European Commission can be revoked and treated as unlawful^{17,18,19}, if it is found that it was granted based on incorrect information.</p> <p>This ensures the proper application of State aid rules and addresses any distortions of competition.</p>
Measure 2	- <i>Measure 2</i> was not notified to DG COMP as State aid
Measure 3	- <i>Measure 3</i> was not notified to DG COMP as State aid

☐ According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

Measure 1	
Measure 2	
Measure 3	

☒ According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved

¹⁷ “In cases of unlawful aid, which is not compatible with the internal market, effective competition should be restored. For this purpose, it is necessary that the aid, including interest, be recovered without delay. It is appropriate that recovery be affected in accordance with the procedures of national law. The application of those procedures should not, by preventing the immediate and effective execution of the Commission decision, impede the restoration of effective competition. To achieve this result, Member States should take all necessary measures ensuring the effectiveness of the Commission decision.” (recital (25) of Council Regulation (EU) 2015/1589).

¹⁸ “Unlike unlawful aid, aid which has possibly been misused is aid which has been previously approved by the Commission. Therefore, the Commission should not be allowed to use a recovery injunction with regard to misuse of aid.” (recital (28) of Council Regulation (EU) 2015/1589).

¹⁹ “in order to ensure that the State aid rules are applied correctly and effectively, the Commission should have the opportunity of revoking a decision which was based on incorrect information” (recital (21) of Council Regulation (EU) 2015/1589).

Measure 1	<p>It should be noted that DG Comp has on two occasions, authorized MPS non-compliance with commitments undertaken by the State, which in itself demonstrates MPS's inability to comply with the conditions set out in the authorization granted in July 2017:</p> <ul style="list-style-type: none"> - in 2019, for the non-compliance with "<i>Commitment 9 – Cost reduction measures – points a) and b)</i>" and "<i>Commitment 24 – Strengthening of the Bank's capital position – point a)</i>" (DG Comp, Annex 15.218). - in 2022, for the non-compliance with "<i>Commitment 11 – Sale of the State participation</i>" and certain other commitments related to divestments and the reduction of operational costs relative to revenues (DG Comp, Annex 15.219). <p>It appears that the following additional commitments were also breached:</p> <ul style="list-style-type: none"> - Breach of the Acquisition Ban and the Disposal Commitment. - Breach of the State's "<i>separate management</i>" commitment. - Likely breach of the headcount and branches cap. - Distortion of competition through the utilization of MPS's deferred tax assets.
Measure 2	
Measure 3	

☐ According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions

Measure 1	
Measure 2	
Measure 3	

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to

distort competition by favouring certain undertakings or the production of certain goods and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

<i>Measure 1</i>	<i>Measure 1</i> consists, on the one hand of a direct capital contribution of euro 3,8 billion from the State to MPS, and, for the remaining euro 1,5 billion, of a capital injection made through the purchase of MPS senior bonds which were subsequently exchanged into MPS shares, tendered by the holders of certain Upper Tier II instruments, converted into shares as part of the “burden sharing”.
<i>Measure 2</i>	<i>Measure 2</i> is an alleged subsidy provided to MPS by the State through a wholly owned company (AMCO) in the form of a premium over the fair market value, paid to MPS for purchase price of a portfolio of non-performing loans.
<i>Measure 3</i>	<i>Measure 3</i> consists of a State capital contribution to MPS of euro 1,6 billion from the exercise of rights - which the State had acquired through <i>Measure 1</i> - to participate in the Rights Offer (2022).

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

<i>Measure 1</i>	<p><i>Measure 1</i> consists of a capital contribution accessed by MPS claiming that the conditions under Article 32(4)(d) of the BRRD were met - since, had they not been, MPS would have had to be placed into resolution.</p> <p>MPS thus benefited from a selective advantage that was not granted to banks that were actually resolved.</p> <p>For example, one can consider the selective advantage obtained by MPS compared to Banca Popolare di Vicenza and Veneto Banca, which approximately at the same time, on 23 June 2017, were declared by the European Central Bank (ECB) to be failing or likely to fail due to a “lack of capital” (ECB, Annex 7.22), and on June 25, 2017 were subjected to compulsory administrative (Bank of Italy, Annex 6.19).</p>
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<i>Measure 2</i>	<p><i>Measure 2</i> was granted exclusively to MPS, rather than being made available to all banks under equal conditions.</p> <p>The State, acting through its wholly owned asset management company (AMCO), did not offer to acquire similar assets from other banks on comparable terms, which confirms that the support was not general in nature.</p> <p>Moreover, a private investor operating under normal market conditions would not have paid - and indeed did not pay - more than the market value for the asset in question. The State's decision to approve the purchase, executed through AMCO, indicates that it acted outside the scope of the "<i>market economy operator principle</i>" (MEOP).</p> <p>As a result, the measure is imputable to the State and qualifies as State aid that is not market-driven.</p>
<i>Measure 3</i>	<p><i>Measure 3</i> relies on the legitimacy of <i>Measure 1</i>, and therefore the same considerations regarding the selective nature and State origin of the support apply here as well.</p> <p>In addition, <i>Measure 3</i> involved a State commitment to underwrite a capital increase of euro 1,6 billion in favour of MPS, without receiving any underwriting fee in return - an arrangement that clearly departs from market conditions.</p> <p>This measure exclusively benefited MPS, as no similar support was made available to other banks under equivalent terms.</p> <p>A rational market operator would not have subscribed to, or provided, an underwriting commitment unless the MEF had first committed to subscribing its own share (euro 1,6 billion), as it did, ahead of any private involvement.</p>

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

<i>Measure 1</i>	<p>The assessment of whether an advantage has been granted must be carried out by applying the 'private operator' principle - or, more specifically in the context of a recapitalisation exercise such</p>
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	<p>as the present one, the 'market economy investor principle' (MEIP).</p> <p>A market investor would not have contributed capital to MPS if it had known that the Bank was not a “<i>solvent institution</i>”, that the capital shortfall was neither “<i>precautionary</i>” nor “<i>temporary</i>”, and that the capital would be used to cover “<i>losses that the institution had already incurred</i>” and indeed concealed.</p>
Measure 2	<p>By applying the 'private operator' principle, it is equally clear that a market investor would not have subsidised the seller for the disposal of a non-performing loan portfolio.</p> <p>Moreover, the acceptance of terms that a private market operator would be unlikely to agree to - such as the acquisition of the portfolio at book value and the secondment of certain MPS personnel to AMCO - provides further evidence of an undue economic advantage granted to MPS.</p>
Measure 3	<p><i>Measure 3</i> is predicated on the legitimacy of <i>Measure 1</i> and, accordingly, the same considerations regarding the economic advantage conferred upon MPS apply.</p> <p>By applying the 'private operator' principle, it is equally evident that <i>Measure 3</i> provided an economic advantage to MPS in the form of a guarantee that no market investor would have granted. The case law of the Court of Justice has also already clarified that risks arising from previous State aid measures granted to a financial institution must be disregarded when applying the private operator principle.²⁰</p>

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

Measure 1	<p><i>Measure 1</i> distorts or threatens to distort competition because it strengthens the position of a market operator that would otherwise have exited the market through resolution.</p>
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²⁰ Commission v FIH Holding and FIH Erhvervsbank (C 579/16 P, EU:C:2018:159)

	<p>By receiving public support under false pretences, MPS avoided the ordinary consequences of its financial failure - such as resolution, bail-in, or market exit - which its competitors would have faced under similar circumstances.</p> <p>This undermines the level playing field in the banking sector, as other institutions that operate efficiently and without State support are placed at a competitive disadvantage. Even if the aid only prolongs the life of an otherwise non-viable bank, this alone constitutes a distortion (or at least a threat of distortion) of competition, since it alters the normal conditions under which market forces would operate.</p>
<i>Measure 2</i>	<p><i>Measure 2</i> distorts or threatens to distort competition because the overpayment for the portfolio of non-performing loan/ effectively provided MPS with a financial benefit - a transfer of public resources that improves its financial position compared to what it would have been under market conditions.</p> <p>In other words, by receiving more than the market value for a disposed portfolio, MPS gained liquidity and capital it would not have otherwise obtained from private investors or buyers.</p> <p>This selective advantage allowed MPS to maintain operations, offer more attractive financial conditions to clients, or avoid necessary restructuring measures - all of which distort the normal functioning of the banking market.</p> <p>Even if the distortion is not immediate, the aid still threatens to distort competition by artificially preserving the market presence of a bank that would otherwise be weakened or downsized.</p>
<i>Measure 3</i>	The same considerations apply as for <i>Measure 1</i>

e) Please explain why, in your view, the alleged aid affects trade between Member States.

<i>Measure 1</i>	<p><i>Measure 1</i> affects trade between Member States because MPS operates in the internal market, offering financial services - such as credit, deposits, and investment services - in competition with other banks across the EU.</p>
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	<p>The banking sector is by nature open to competition across borders, and any public intervention that strengthens one bank in a Member State can affect the relative position of banks established in other Member States.</p> <p>According to the settled case law of the Court of Justice, trade is affected when the recipient of the aid competes in markets where cross-border trade exists - which is unquestionably the case in the EU banking sector.</p>
Measure 2	<p><i>Measure 2</i> affects trade between Member States because the banking sector is inherently integrated at EU level.</p> <p>MPS, competes in a European market where banks from other Member States offer services - either through branches, cross-border lending, or digital platforms.</p> <p>Strengthening MPS's financial position through a non-market asset transfer gives it a competitive advantage <i>vis-à-vis</i> banks established in other Member States that must operate under normal market conditions.</p> <p>According to established EU case law, even the potential to affect trade is sufficient: since MPS operates in a liberalised market open to EU-wide competition, the overpayment distorts the relative market position of competitors across borders.</p>
Measure 3	<p>The same considerations apply as for <i>Measure 1</i></p>

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

Measure 1	<p>REFERENCE BACKGROUND</p> <p>To provide context for the topic, the following facts are recalled:</p> <ul style="list-style-type: none"> - on March 25, 2016, MPS denied press reports suggesting that despite the significant private capital raised in 2013 (euro 5 billion) and 2015 (euro 3 billion), the Bank's situation was so compromised that it would still need to raise at least an
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	<p>additional euro 3 billion by the end of the year. MPS denied the rumours as ungrounded (MPS, Annex 10.90).</p> <ul style="list-style-type: none"> - on June 23, 2016, MPS received a confidential communication from the ECB, in which the supervisory authority criticized the Bank for failing to properly write down impaired loans - recording loan losses provisions only to the extent that sufficient capital was available to absorb them. <p>The ECB requested MPS to present, by October 3, 2016, “<i>a credible plan</i>” to reduce the stock of non-performing loans (ECB, Annex 18.6).</p> <ul style="list-style-type: none"> - on July 29, 2016, MPS announced a new plan involving (i) the deconsolidation of its entire portfolio of non-performing loans (NPLs)²¹ and; (ii) a new euro 5,0 billion capital increase to be carried out in 2016 to absorb the loss resulting from the disposal of the NPLs, which would reveal a value lower than their book value (MPS, Annex 10.57). - on July 29, 2016, MPS disclosed the results of the EBA <i>stress tests</i>, which showed a capital shortfall under the adverse scenario, with the CET1 ratio even turning negative (- 2.2%) (MPS, Annex 10.89). - on November 24, 2016, MPS shareholders meeting approved the new euro 5,0 billion capital increase (MPS Annex 10.92) previously announced on July 29, 2016. - on December 23, 2016, CONSOB (CONSOB, Annex 5.11), ordered the suspension of trading for MPS stock, whose value had effectively collapsed to near zero. The Bank’s market capitalization had fallen to just euro 442 million, as the market was anticipating the Bank’s potential wind-up^{22,23}. - on December 26, 2016, MPS announced that (i) it had failed to complete the euro 5,0 billion capital increase and (ii) on the prior December 23²⁴, it had submitted to the ECB a request
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²¹ euro 27,7 billion gross and euro 10,2 billion net as of March 31, 2016

²² last stock trading price before suspension of euro 15.08 per share with MPS capital consisting of 29,320,798 ordinary shares (**MPS, Annex 9.18**). The stock remained suspended until after the “*precautionary recapitalization*”, and only on October 24, 2017, CONSOB, with resolution no. 20167, decided to allow the relisting of the shares starting from October 25, 2017

²³ Despite two capital increases – euro 5 billion in 2014 and euro 3 billion in 2015 -

²⁴ At the same time, on December 23, 2016, the Italian authorities had approved the Law Decree No. 237 Urgent provisions for the protection of savings in the banking sector (Official Gazette No. 299 of December 23, 2016) setting

	<p>for extraordinary and temporary financial assistance to access the “<i>precautionary recapitalization</i>” measure (MPS, Annex 10.100).</p> <ul style="list-style-type: none"> - on December 29, 2016 - following a statement issued on December 23, 2016 by the ECB stating that the Bank had remained solvent - the DG Comp²⁵ approved a euro 15 billion liquidity aid. - on June 28, 2017, the ECB issued a letter to the European Commission which stipulated that at March 31, 2017 - on a consolidated level - the Bank had a CET1-ratio of 6.46% and a total capital ratio of 8.89%. The letter concluded that the Bank was solvent at the day of sending the letter from the point of view of compliance with the Pillar 1 minimum capital requirements - as per Article 92 of Regulation (EU) No 575/201331 (“CRR”)²⁶. - on June 28, 2017, the Italian authorities notified recapitalization aid of up to euro 5,4 billion accompanied by a new restructuring plan (the “Restructuring Plan 2017-2021”, MPS, Annex 10.180)²⁷. - on July 4, 2017, the EC Commission approved the State aid with Final Decision C(2017) 4690^{28,29}. <p style="text-align: center;">*</p> <p>REPRESENTATIONS TO THE DG COMP</p> <p><i>Measure 1</i> was notified to the DG Comp and authorised based on the following main representations (EC Commission Final Decision</p>
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out the legal framework for MPS to access liquidity aid and State capital support. The Decree-Law converted with amendments by Law No. 15 of February 17, 2017 (published in the Official Gazette No. 43 on February 21, 2017) (**Law Decree, Annex 15.180 and 15.181**)

²⁵ European Commission Decision C(2016) 9032 (December 29, 2016) (**DG Comp, Annex 15.221**)

²⁶ MPS being solvent, under the BRRD directive, was a necessary precondition to have access to the “*precautionary recapitalization*”

²⁷ The notification also contained a signed term sheet in which MPS and a purchaser agreed on the sale of the junior tranches of a securitization vehicle to which the bad loans (or ‘sofferenze’) would be transferred

²⁸ European Commission Decision C(2017) 4690 (July 4, 2017) (**DG Comp, Annex 15.108**)

²⁹ On August 1, 2017, MPS issued 517,099,404 new shares in exchange for the forced conversion of all subordinated bonds previously issued by the Bank, amounting to EUR 4,472,909,844.60 (“*burden sharing*”) of which euro 1,535,830,866.00 tendered to the MEF in November 2017 following the completion of the public exchange offer addressed to holders of Upper Tier II bonds and; on August 10, 2017, MPS issued 593.869.870 new shares subscribed by the MEF for the consideration of Euro 3.854.215.456,30

	<p>C(2017)4690, recital (73)-(75), DG Comp, Appendix 15.108):</p> <ul style="list-style-type: none"> - MPS applied for a “<i>precautionary recapitalization</i>” measure, under the exemption of Article 3(4)(d) of the BRRD. - MPS had remained solvent. - The public support was needed to cover the capital shortfall in the adverse scenario of the 2016 EBA stress test (MPS, Annex 10.89) - The public support was temporary, with the State to exit MPS by the end of 2021. <p style="text-align: center;">*</p> <p>REFERENCE LEGAL FRAMEWORK: BRRD</p> <p><i>Measure 1</i> was framed as a “<i>precautionary recapitalization</i>” with reference to the BRRD.</p> <p>The BRRD generally assumes that, in the presence of public support intervention, a bank is in crisis and therefore must either be resolved or (if the conditions for resolution are not met) liquidated.</p> <p>However, Article 32(4)(d) of the BRRD provides an exemption under which a public “<i>precautionary</i>” capital strengthening measure is permitted - without triggering resolution procedures - if the capital shortfall arises under the adverse scenario of a <i>stress test</i> conducted at the national level, at the European level, or by the Single Supervisory Mechanism, and is aimed at remedying a serious disturbance in a Member State’s economy and preserving financial stability.</p> <p>This exemption applies only if specific conditions are met.</p> <p>The rationale behind it, is that an intermediary, even if solvent, may be perceived as excessively risky by the market under adverse stress conditions, a situation that could, in itself, lead to a deterioration of its situation and consequently insolvency.</p> <p>Therefore, “<i>precautionary recapitalization</i>” can resolve cases where information asymmetries hinder the proper functioning of market mechanisms, generating risks for individual intermediaries and financial stability.</p>
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	<p>The exemption of Article 32(4)(d)(i)³⁰(ii)³¹ and (iii)³² allows for an injection of own funds or purchase of capital instruments which does not result in that institution being considered to be <i>"failing or likely to fail"</i>³³ provided the following conditions are met:</p> <ul style="list-style-type: none"> • the aid is required <i>"in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability"</i>. • the aid is granted <i>"at prices and on terms that do not confer an advantage upon the institution"</i>. • the aid <i>"shall be confined to solvent institutions"</i>. • the aid <i>"shall be conditional on final approval under State aid framework"</i>. • the aid <i>"shall be of a precautionary and temporary nature"</i>. • the aid <i>"shall be proportionate to remedy a serious disturbance in the economy of the Member State"</i>. • the aid <i>"shall not be used to offset losses that the institution has incurred or is likely to incur in the near future"</i>. • the aid is <i>"limited to injections necessary to address capital shortfall established in the national, Union or SSM-wide stress tests, asset quality reviews or equivalent exercises conducted by the European Central Bank, EBA or national authorities"</i>. <p>Minutes of the parliamentary hearing on <u>December 17, 2017</u> by the Head of Supervision at the Bank of Italy confirmed that MPS had <i>"submitted a request for precautionary recapitalization by the State"</i></p>
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³⁰ a State guarantee to back liquidity facilities provided by central banks according to the central banks' conditions.

³¹ a State guarantee of newly issued liabilities.

³² an injection of own funds or purchase of capital instruments at prices and on terms that do not confer an advantage upon the institution, where neither the circumstances referred to in point (a), (b) or (c) of this paragraph nor the circumstances referred to in Article 59(3) are present at the time the public support is granted.

³³ According to the BRRD an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances (Article 32(4)(a)(b)(c) e (d)): (i) the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds; (ii) the assets of the institution are or there are objective elements to support a determination that the assets of the institution will, in the near future, be less than its liabilities; (iii) the institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to pay its debts or other liabilities as they fall due and; (iv) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability.

	<p>(Bank of Italy, Annex 6.13, translation³⁴) and that under the BRRD the “<i>precautionary recapitalization</i>” is a form of public intervention that “<i>must be directed only to banks that are not to be subject to resolution or liquidation</i>”³⁵ (Bank of Italy, Annex 6.13, translation³⁶) and “<i>cannot be used to cover losses, whether current or expected</i>” (Bank of Italy, Annex 6.13, translation³⁷).</p> <p style="text-align: center;">*</p> <p>INCOMPATIBILITY WITH THE INTERNAL MARKET</p> <p>The European Commission, approved <i>Measure 1</i>, under the exemption of Article 32(4)(d) “<u>based on the available information</u>” (DG Comp, Annex 15.108, p. 25).</p> <p>Based on new information that was not available to DG Comp at the time of the authorization (July 4, 2017), it appears that the exemption of Article 32(4)(d) did not apply to MPS, thus the State aid should be considered unlawful.</p>
Measure 2	<p>RELEVANT BACKGROUND</p> <p>To provide context for the topic, the following facts are recalled:</p> <ul style="list-style-type: none"> - on 29 June 2020, MPS (then 68,24% owned by the MEF, following <i>Measure 1</i>) announced the agreement to sell a euro 3,6 billion portfolio of non-performing loans³⁸ to AMCO-Asset Management Company S.p.A. (“AMCO”), which is 100% owned by the MEF (MPS, Annex 10.149). <p>The disposal was executed through a complex transaction (the “Hydra Transaction”) consisting into the partial non-proportional demerger with asymmetric option by MPS in</p>

³⁴ Original text: “*presentato richiesta di ricapitalizzazione precauzionale da parte dello Stato*”

³⁵ Under Art. 32 (4) of the BRRD directive “*an institution shall be deemed to be failing or likely to fail in one or more of the following circumstances*” including “*the institution infringes or there are objective elements to support a determination that the institution will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of the authorisation by the competent authority including but not limited to because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;*”

³⁶ Original text: “*deve indirizzarsi solo a banche non da sottoporre a risoluzione o liquidazione*”

³⁷ Original text: “*non può essere utilizzato per ripianare perdite, attuali o attese*”

³⁸ The portfolio mainly consists of non-performing loans classified as bad loans, with a net book value of euro 2,313 million (gross book value of EUR 4,798 million), and unlikely to pay (“UTPs”), with a net book value of euro 1,843 million (gross book value of euro 3,345 million) (**MPS, Annex 9.37**).

	<p>favour of AMCO of the non-performing loans plus certain tax assets, other assets, financial debt, other liabilities and shareholder's equity (MPS, Annex 10.151).</p> <ul style="list-style-type: none"> - on October 4, 2020, MPS shareholders' meeting approved the Hydra Transaction (MPS, Annex 10.152). - on October 16, 2020, the President of the Italian Council of Ministers issued a decree to provide State authorization for the Hydra Transaction (Presidential Decree, Annex 15.215). - on December 1, 2020, MPS announced the completion the Hydra Transaction (MPS, Annex 10.156)³⁹. <p style="text-align: center;">*</p> <p>REPRESENTATIONS TO THE DG COMP</p> <p>Whereas it is for Member States to assess whether an intervention constitutes State aid requiring formal notification to the Commission, the Hydra Transaction was not notified to the DG Comp for its approval, based on the determination that it did not constitute State aid.</p> <p style="text-align: center;">*</p> <p>INCOMPATIBILITY WITH THE INTERNAL MARKET</p> <p>Based on information that was not available at the time MPS announced the Hydra Transaction, it appears that AMCO (100% State-owned) acquired the MPS portfolio paying a premium above the fair value of the portfolio.</p> <p>If MPS obtained a selective advantage from the State through AMCO - an advantage falling outside the scope of the derogations provided under Articles 107(2) and (3) TFEU - this would constitute State aid that was not notified to DG Comp, is incompatible with the internal market, and is therefore illegal.</p>
Measure 3	RELEVANT BACKGROUND

³⁹ At the completion of the transaction, the MEF owned an overall stake of approximately 64,23% of the share capital of MPS (compared to a stake of 68,24% held before).

	<p>To provide context for the topic, the following facts are recalled:</p> <ul style="list-style-type: none"> - on November 13, 2020, MPS published the financial results as of September 30, 2020, disclosing a new capital shortfall: “<i>a prospective shortfall with respect to SREP capital requirements emerged, with respect to which capital strengthening initiatives are being evaluated</i>” (MPS, Annex 9.38). - on December 17, 2020, MPS quantified the capital shortfall in a range between euro 2,0 and 2,5 billion (MPS, Annex 10.155)⁴⁰. - on January 28, 2021, MPS announced a new capital increase offered to shareholders on a pre-emptive basis (the “Rights Offer”) of “<i>Euro 2,5 billion, which, if implemented, will be executed at market terms and with proportional subscription by the State</i>” (MPS, Annex 10.159). <p>With the same communication, MPS confirmed that “<i>as per the press release dated 17 December 2020, the Bank could find itself below the combined buffer requirements, affecting the Capital Conservation Buffer ("CCB"), starting from 31 March 2021</i>” (MPS, Annex 10.159).</p> <ul style="list-style-type: none"> - on August 2, 2022, with decision C(2022) 5536 final (DG Comp, Annex 15.212) - see also press release dated August 2, 2022 (DG Comp, Annex 15.219) - the DG Comp agreed on a second amendment⁴¹ to the list of commitments related to the aid granted to MPS in 2017 (<i>Measure I</i>).
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⁴⁰ “MPS is committed to preparing a new capital plan to be submitted to the European Central Bank by 31 January 2021. The capital plan will contain an assessment of capital needs (over the medium term and not limited to CET1), quantified between EUR 2.0 billion and EUR 2.5 billion, and an indication of how these needs will be met. The assumed capital strengthening is adequate to solve the regulatory capital shortfall scenario, quantified in more than EUR 0.3 billion as of 31 March 2021 and in about EUR 1.5 billion as of 1 January 2022” (MPS, Annex 10.155).

⁴¹ the list of commitments related to the aid granted to MPS in 2017 were first amended on September 12, 2019, with EC Decision C(2019) 6525 final (DG Comp, Annex 15.218)

	<p>The decision <u>made no reference</u> of any new additional State capital contribution (<i>Measure 3</i>) as it only concerned the amendment of the State aid commitments relating to MPS to ensure the continued legality of the aid that the Bank received in 2017 under the case number SA47477.</p> <ul style="list-style-type: none"> - on August 5, 2022, MPS Board of Directors called the shareholders' meeting to approve the proposal <i>"to increase the corporate capital against payment up to a maximum overall amount of Euro 2.500.000.000,00 to be carried out, in divisible form, through the issuance of ordinary shares, to be offered to the Company's Shareholders, pursuant to Article 2441 of the Italian Civil Code"</i> (MPS, Annex 10.172). - on August 12, 2022 MPS issued a communication stating that <u>"the proposed transaction is subject to authorization by the competent Supervisory Authorities (BCE, Directorate-General for Competition – DG COMP), within the scope of their respective competencies, as well as to the approval by CONSOB of the Prospectus and listing of the shares issued as a result of the Capital Increase, carried out pursuant to articles 94 and ff. and 113 of the TUF, of the Regulation (EU) no. 2017/1129 of the European Parliament and of the Council, and drawn up in accordance with the format prescribed by the applicable regulations to the European Economic Area"</u> (MPS, Annex 10.157). - on September 5, 2022, MPS issued a press release stating that <i>"the European Central Bank has approved, for the aspects falling under its competence, the capital strengthening</i>
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	<p>transaction that will be submitted to the shareholders' meeting on 15 September 2022. <u>This approval is in addition to the completion of the authorization process by DG Competition, as communicated by the same authority in the previous weeks</u>" (MPS, Annex 10.158).</p> <ul style="list-style-type: none"> - on October 13, 2022, MPS announced the final terms and conditions of the Rights Offer (MPS, Annex 10.161). - on November 4, 2022, MPS announced that the Rights Offer was fully subscribed, with the State contributing euro 1.6 billion (MPS, Annex 10.173). <p style="text-align: center;">*</p> <p>REPRESENTATIONS TO THE DG COMP</p> <p>Whereas it is for Member States to assess whether a State intervention constitutes State aid requiring notification to the Commission, <i>Measure 3</i> was not notified the DG Comp as State aid on the determination that it did not constitute State aid.</p> <p style="text-align: center;">*</p> <p>INCOMPATIBILITY WITH THE INTERNAL MARKET</p> <p>The legitimacy of <i>Measure 3</i> under State aid law was predicated on the assumption that it merely consisted in the exercise of pre-emption rights attached to the shareholding acquired by the State through the capital contribution under <i>Measure 1</i>, which had been authorised by DG Comp.</p> <p>The recognition of the incompatibility of <i>Measure 1</i> with the internal market, would have the immediate and direct consequence of rendering <i>Measure 3</i> unlawful as well, as its only legal basis derives from the authorization of <i>Measure 1</i>.</p>
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9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

<p>Measure 1</p>	<p>Preliminarily, we note that the BRRD⁴² establishes, pursuant to Article 32(4)(d) that extraordinary public financial support shall, among other things, (i) be confined to solvent institutions, (ii) not be used to offset losses that an institution has incurred or is likely to incur in the near future and (iii) it should be temporary in nature.</p> <p>On July 4, 2017, the European Commission, “<u>based on the available information</u>” (European Commission, DG Comp, Annex 15.108, p. 25), approved the aid, considering that the conditions set out in Article 32(4)(d) of the BRRD Directive had been met.</p> <p>However, <u>new evidence that emerged after July 4, 2017</u>, has been reviewed by the Claimant, suggesting that the DG Comp authorization was based on incorrect information provided by the beneficiary:</p> <p>1. The monumental (5.662 page long) independent expert opinion prepared by Professors Gaetano Bellavia and Fulvia Ferradini, appointed by the judicial authority which was filed on April 21, 2021 (Annex 19.26)</p> <p>The <u>new</u> evidence indicates that: (i) MPS's financial statements from 2012 to 2017 were found to be non-compliant due to the failure to properly recognise loan losses provisions loans, in violation of accounting standards (IAS 1, IAS 39); (ii) MPS recorded a euro 4,0 billion in loan losses provision in Q2 2017 that should have been recognized in 2015; and (iii) at the end of 2016 - i.e., when the “precautionary recapitalization”</p>
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⁴² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L173, 12.6.2014, p. 190).

	<p>procedure was activated - MPS had net equity amounting to less than half of what it had reported^{43,44,45}.</p> <p>The independent expert report Bellavia-Ferradini is of particular importance for at least two reasons: (i) it was prepared by independent experts appointed by the judicial authority; and (ii) it was conducted within the framework of a court-ordered evidentiary proceeding (“<i>incidente probatorio</i>”), carried out in full adversarial procedure between the parties, thereby giving it the status of admissible evidence.</p> <p>2. The independent expert opinion prepared by Dr. Stefania Chiaruttini and Dr. Luca Minetto, appointed by the judicial authority which was filed on <u>May 6, 2022</u> (Chiaruttini-Minetto, Annex 8.44)</p> <p>The <u>new</u> evidence indicates that the independent experts Chiaruttini and Minetto, while applying a different methodology, confirmed the findings of the independent experts Bellavia and Ferradini.</p> <p>With reference to MPS’s position as of December 31, 2015 Chiaruttini and Minetto calculated exactly the same percentage (23%)^{46,47} of omitted credit loan loss provisions - of which the</p>
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⁴³ “In the consolidated financial statements as of 31/12/2015, the MPS Group did not record, on an accrual basis, loan loss adjustments totaling euro 6,875.21 million, which were attributable to the findings of the inspection carried out by the European Central Bank as part of the OSI process between 17/05/2016 and 17/02/2017, with reference to the financial statements closed on 31/12/2015, as reported and documented in Sections 4.3, 5.3, and 5.4 of this Report” (Annex 19.26, p. 5639, translation)

⁴⁴ “The consolidated net book equity for the 2015 financial year, which reflected the capital increase of euro 3 billion carried out in June 2015, decreased from euro 9,623 million to euro 4,904.61 million” (Annex 19.26, p. 5644, translation)

⁴⁵ “The consolidated net book equity for the 2016 financial year of euro 6,460.30 million decreases to euro 3,504.47 million.” (Annex 19.26, p. 5642, translation)

⁴⁶ Chiaruttini-Minetto, analysed a sample of the “100 positions for which the European Central Bank, during the 2015–2016 OSI [i.e., the inspection as of December 31, 2015], indicated the greatest difference between the provisions made by the Bank and those suggested by the ECB,” with an aggregate gross exposure of euro 2,763.4 million. On these positions, as of December 31, 2015, MPS had recorded total write-downs of euro 811.4 million (Chiaruttini-Minetto, Annex 8.44). For this same sample, the experts identified omitted adjustments totaling euro 240.5 million, which led them to determine that MPS failed to record 23% of the correct amount of adjustments (i.e., $240 / [240 + 811.4] = 22.8\%$).

⁴⁷ Bellavia-Ferradini based their analysis on the findings of the ECB inspection (OSI 2016, referring to the position as of December 31, 2015). The ECB analysed a loan portfolio of “1,707 positions” with a total gross exposure of “euro 128.8 billion” and determined that “additional provisions of euro 7.55 billion would be necessary, compared to the existing euro 22.7 billion in provisions as of 31.12.2015” (ECB, Annex 17.1). The ECB thus concluded that MPS failed to recognize 25% (i.e., $7.55 / [7.55 + 22.7] = 24.9\%$) of the correct amount of provisions—a figure already broadly consistent with that calculated by experts Chiaruttini and Minetto. Bellavia-Ferradini, starting from the ECB's estimate of omitted provisions as of December 31, 2015 (“euro 7.55 billion”), recalculated - based strictly on accounting principles - the portion of omitted provisions attributable to the 2015 financial statements as “euro 6.875 billion” (Annex 19.26, p. 5455), thereby establishing that MPS failed to recognize 23% (i.e., $6.875 / [6.875 + 22.7] = 23.2\%$) of the correct amount of provisions.

	<p>euro 4,0 billion in adjustments recognized in August 2017 formed a part - as Bellavia and Ferradini.</p> <p>The independent experts Chiaruttini and Minetto also confirmed that MPS's 2016 financial statements did not comply with IAS principles.</p> <p>These 2016 financial statements were the audited annual accounts submitted by MPS prior to the completion of the "precautionary recapitalization".</p> <p>3. The letter from the then-President of the ECB (Mario Draghi) to the then-CEO of MPS (Fabrizio Viola) dated <u>June 23, 2016</u> (ECB, Annex 18.6), and the exchange of comments between MPS and the ECB on <u>April 7, 2017</u> (ECB-MPS, Annex 7.19) regarding the draft version of the ECB's inspection report, finalized on June 2, 2017 (ECB, Annex 17.1).</p> <p>The evidence, although referring to documents produced prior to 4 July 2017, should reasonably be considered as <u>new</u> for DG Comp, in the sense that it had not been acquired at the time of the decision: it is not mentioned in the authorising decision, and had it been available, it would have realistically cast doubt on the assumptions on which the authorization was based.</p> <p>The <u>new</u> evidence indicates that: <i>(i)</i> In 2016, the ECB found that MPS failed to promptly recognize credit losses in accordance to the applicable International Accounting Standards (IAS). Instead, the Bank only recorded loan loss provisions when it had sufficient capital to absorb them⁴⁸; and <i>(ii)</i> the ECB uncovered that MPS was providing "misleading" representations⁴⁹.</p> <p>4. The EU parliamentary hearing (EU Parliament, Annex 18.8) of Dr. Andrea Enria, Chair of the ECB's Single</p>
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⁴⁸ "the arrangements, strategies, processes and mechanisms implemented by BMPS and the own funds and liquidity held by it do not ensure a sound management and coverage of its risks" (p. 3), "if BMPS fails to fulfil the below requirements, including the presentation of a credible plan to reduce its non-performing loans ratio by 2018, the ECB will consider imposing early intervention measures" (, p. 1) and "NPL divestment process appears constrained by the limited loss absorption capacity"(ECB, Annex 18.6, p.4)

⁴⁹ "the Bank's observations are misleading" (ECB-MPS, Annex 7.19).

	<p>Supervisory Mechanism, held on August 6, 2019 (ECB, Annex 7.11)</p> <p>The <u>new</u> evidence indicates that: <i>(i)</i> the ECB - evidently also drawing upon an expanded base of information - acknowledged⁵⁰ that the euro 7,55 billion in omitted credit losses provisions (MPS 2015 financial statements) identified by the ECB in the inspection report dated June 2, 2017 (ECB, Annex 17.1), were “largely overlapping” (ECB, Annex 7.11) with the loan losses provisions taken by MPS in the 2016 financial statements and as of March 31, 2017; and <i>(ii)</i> “where no overlap could be confirmed, the ECB asked for the provisions to be booked” (ECB, Annex 7.11), including the euro 4,0 billion recorded in the financial statements as of June 30, 2017).</p> <p>This statement holds particular significance in light of the fact that Dr. Enria did not participate in the ECB’s decision-making process for the 2017 “precautionary recapitalization” - specifically, he was not involved in issuing the ECB’s solvency opinion of June 28, 2017, a necessary act for the implementation of the regime - as he was only appointed in November 2018, succeeding his predecessor Danièle Nouy, with a five-year mandate effective from January 1⁰, 2019.</p> <p>The <u>new</u> information referenced in recitals 1 to 4 appears to indicate that MPS in 2016 was not a solvent institution - thereby breaching the conditions set out in Article 32(4)(d) of the BRRD - and that the Bank concealed its state of insolvency also to the regulators by failing to properly record impairments on non-performing loans.</p>
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⁵⁰ “ Indeed, the need for additional provisions revealed by the OSI report of June 2017 (based on a portfolio reference date of 31 December 2015) was considered to largely overlap with (i) losses already booked by MPS in its financial statements as at 31 December 2016 and 31 March 2017, or (ii) losses estimated to arise from the bad loans disposal requested by the European authorities as a key pillar of the restructuring plan underlying the precautionary recapitalisation of MPS. These overlaps were confirmed by MPS and supported by its external auditors. Where no overlap could be confirmed, the ECB asked for the provisions to be booked. As stated in its decision on the granting of State aid, the European Commission concluded that the precautionary recapitalisation (capital support) was not used to offset losses that the bank had incurred or was likely to incur in the near future” (ECB, Annex 7.11)

	<p>5. The resolution adopted by the Board of Directors of MPS on <u>August 11, 2017</u>, approving the financial statements as of <u>June 30, 2017</u> (MPS, Annex 9.31)</p> <p>The new⁵¹ evidence indicates that MPS resolved to recognize non-recurring loan adjustments amounting to euro 4,0 billion <u>on the day immediately following</u> the change in share capital (MPS, Annex 10.95)⁵² occurred as a result of the “<i>precautionary recapitalization</i>” approved by the MEF on July 27, 2017⁵³.</p> <p>Provided that capital is fungible, the capital contributed by the State (euro 3,9 billion) was on the following day utilized to absorb losses on the credit portfolio (euro 4,0 billion). In other words, MPS would not have had sufficient capital to absorb the euro 4,0 billion loan loss provision, if the MEF had not contributed the capital just a few days earlier.</p> <p>In its financial statements as of June 30, 2017, MPS stated that the euro 4,0 billion adjustments were the result of an agreement for the disposal of non-performing loans concluded on June 26, 2017 (MPS, Annex 9.32, p. 47). As such, MPS constituted a subsequent event - i.e., not known at the time of the representations made on December 23, 2016 (MPS, Annex 10.54) to obtain authorization for the “<i>precautionary recapitalization</i>”.</p> <p>It should be noted that, as of March 31, 2017 - the date of the last financial report approved prior to receiving State aid - MPS reported consolidated net equity of euro 6,04 billion and Common Equity Tier 1 (CET1) capital of euro 4,16 billion (MPS, Annex 9.31), clearly insufficient to cover the credit losses expensed in the following quarter.</p>
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⁵¹ “**New**” meaning acquired after DG Comp’s authorization of MPS State aid granted on July 4, 2017 (DG Comp, Annex 15.108)

⁵² pursuant to Article 85-bis of the Issuers’ Regulation

⁵³ On July 27, 2017, the MEF issued a decree providing for a capital increase to the benefit of MPS of euro 8,327,125,300.90, of which (i) euro 3,854,215,456.30 subscribed by the MEF and (ii) euro 4,472,909,844.60 contributed through the conversion into ordinary shares of MPS subordinated debt (“*burden sharing*”)

	<p>6. The results of the Exchange Offer targeted to holders of Upper Tier II bonds dated <u>October 5, 2017</u> (MPS, Annex 9.51) disclosed on <u>November 23, 2017</u> (MPS, Annex 10.148)</p> <p>The new evidence indicates that, given the terms under which the offer was structured - resulting in an allocation coefficient of 92% - the “<i>precautionary recapitalization</i>” of euro 8,3 billion was ultimately completed through a contribution of euro 5,4 billion from the State and euro 2,9 billion from the private sector.</p> <p>Whilst as of August 2017, euro 3,8 billion had been subscribed by the State and euro 4,5 billion contributed from the private sector through the “<i>burden sharing</i>” mechanism, it ultimately became clear that the capital contributed by the private sector was only euro 2,9 billion, thus wholly insufficient to support the claim that MPS had used private funds - rather than public resources - to cover residual credit losses, as DG Comp had been led to believe “<i>based on the available information</i>” (EC DG Comp, DG Comp, Annex 15.108, p. 25).⁵⁴</p> <p>7. The resolution adopted by the MPS Board of Directors, submitted at the shareholders' meeting convened for <u>December 18, 2017</u> (MPS, Annex 10.60)</p> <p>The new evidence indicates that “<i>the combined effect of the current period loss and accumulated losses results in a total loss as of September 30, 2017, of euro 5.364.181.090,83, which the Board proposes to fully offset through a reduction of share capital, as the Company has no available reserves</i>” (MPS, Annex 10.60).</p>
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⁵⁴ “Losses incurred by the Bank after the 2016 stress test (which had the date of 31 December 2015 as cut-off point), i.e. losses reported in 2016 and in 1Q 2017 were already booked by the Bank in its accounts and charged against its equity. As for likely losses, those were estimated at EUR 4.4 billion and include: (i) losses of the disposal of bad loans, leasing and small tickets (EUR 4.2 billion) resulting from the difference between these assets' book value and their estimated sales price, and (ii) results of the ECB's on-site inspection which are not overlapping with past losses or losses from the bad loans transaction and hence still have to be booked by the Bank (EUR 0.25 billion). At the same time, the Bank disposes of private means which encompass: (i) excess capital above the minimum capital requirement of 4.5% as of the last accounting period of 1Q 2017 (EUR 1.3 billion); (ii) certain proceeds to be received by the Bank from the sale of its merchant acquiring business (EUR 0.5 billion); and (iii) private capital generated from net burden-sharing, i.e. from the conversion of subordinated debt instruments into equity netted by the amount of compensation paid out by the Bank to missold retail investors (at least EUR 2.9 billion). Consequently, the whole amount of the EUR 4.4 billion of likely losses is fully covered by the private means available at the Bank. Therefore, the Commission concludes that the Measure 2 is not used to offset losses that the Bank has incurred or is likely to incur in the near future” (EC Final Decision C(2017) 4690 final, recital (133))

	<p>The reduction of share capital (euro 5.364.181.090,83), proposed by MPS's Board of Directors in September 2017 and approved by the AGM in December 2017, corresponded almost exactly to the aggregate capital contribution made by the MEF between August and November 2017, upon completion of the "precautionary recapitalization" (euro 5.390.046.322,30)⁵⁵.</p> <p>The new information referred to in recitals 5 to 7, read in conjunction with the information under recitals 1 to 4, appears to indicate that in 2017 MPS used euro 5,4 billion State aid to offset losses that had already been incurred and concealed, thereby breaching the conditions set out in Article 32(4)(d) of the BRRD.</p> <p>8. The press release issued by MPS on <u>June 29, 2020</u> (MPS, Annex 10.149), the documentation prepared by MPS for the shareholders' meeting of <u>4 October 2020</u> (MPS, Annexes 10.151 and 10.152), the press release issued by MPS on <u>December 1, 2020</u> (MPS, Annex 10.156), and the press release issued by the State-owned company AMCO on <u>March 8, 2022</u> (AMCO, Annex 15.217).</p> <p>The <u>new</u> evidence indicates that MPS - which had already received substantial State aid in 2013⁵⁶, 2016⁵⁷ and 2017⁵⁸ - continued to benefit from additional support in 2020, when a wholly State-owned company (AMCO) purchased a portfolio of non-performing loans at book value, paying a euro 529 million premium over fair value. This effectively amounted to an additional State capital contribution (<i>Measure 2</i>)</p> <p>9. MPS's Q3 2020 financial statement, published on <u>November 13, 2020</u> (MPS, Annex 9.38), the press releases issued by MPS on <u>December 17, 2020</u> (MPS, Annex 10.155) and <u>January 28, 2021</u> (MPS, Annex 10.159), the notice issued by MPS on <u>August 5, 2022</u>, to convene a shareholders' meeting</p>
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⁵⁵ of which euro 3,854,215,456.30 was for the subscription of new shares in August 2017, and euro 1,535,830,866.00 in November 2017 following the completion of the public exchange offer addressed to holders of Upper Tier II bonds

⁵⁶ **DG Comp, Annex 15.16** - European Commission Decision C(2013) 8427 final (November 27, 2013)

⁵⁷ **DG Comp, Annex 15.221** - European Commission Decision C(2016) 9032 (December 29, 2016)

⁵⁸ **DG Comp, Annex 15.108** - European Commission Decision C(2017) 4690 (July 4, 2017)

	<p>(MPS, Annex 10.172), the explanatory report issued by MPS's Board of Directors on <u>August 12, 2022</u> (MPS, Annex 10.157), and the press release issued by MPS on <u>November 4, 2022</u> (MPS, Annex 10.173).</p> <p>The <u>new</u> evidence indicates that MPS after the “<i>precautionary recapitalization</i>” in 2017, faced a new capital shortfall, requiring a capital contribution of approx. euro 3,0 billion of which euro 2,1 billion contributed by the State (<i>Measure 2 and 3</i>) and 0,9 bn from the private sector</p> <p>10. Statements by the Ministry of Economy and Finance (MEF) during the parliamentary hearing on <u>March 28, 2022</u> (MEF, <u>Annex 15.216</u>)</p> <p>The <u>new</u> evidence indicates that, as acknowledged by the MEF itself, “<i>despite the Bank's efforts in the years following the approval of the plan, the objectives set out in the plan were only partially achieved. I refer in particular to the commitments related to enhancing profitability, achieving a balanced cost-to-income ratio, and strengthening capital.</i>” (MEF, Annex 15.216, translation).</p> <p>It was also noted that “<i>the first difficulties in meeting the commitments concerned the strengthening of the capital position</i>” whereas the main objective actually achieved was “<i>the significant reduction in the ratio of non-performing loans to total loans, which decreased substantially, largely as a result of the 'Hydra' transaction</i>” (MEF, Annex 15.216, translation) - a goal reached thanks to the additional State aid provided under <i>Measure 2</i>.</p> <p>11. The complete wipeout of MPS's market capitalization following the receipt of State aid (2017), up until the subsequent State intervention in October 2022 (<i>Measure 3</i>). (MPS, Annex 1.161 and 1.178)</p> <p>The <u>new</u> evidence indicates that, during the five-year period from 2017 to 2022, MPS failed to restore the Bank's viability:</p>
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	<ul style="list-style-type: none"> - on July 4, 2017, at the time of the DG Comp authorization of the euro 5,4 billion State aid, MPS had a market capitalization of euro 442 million⁵⁹. - on October 11, 2022, at the time of pricing the euro 2,5 billion Rights Offer⁶⁰ - of which euro 1,6 billion contributed by the State -, MPS's had a market capitalization of euro 233 million (MPS, Annex 1.161 and 1.179)⁶¹, despite the euro 5,4 billion State aid in 2017. <p>As an additional confirmation of the MEF's statement in March 2022 (MEF, Annex 15.216), this further demonstrates both the ineffectiveness of MPS Restructuring Plan 2017–202 (MPS Annex 10.180) - which served as the basis for the DG Comp's approval of State aid in July 2017 - and MPS's failure to regain market access without ongoing State support.</p> <p>The new information referred to in recitals 8 to 11 appears to indicate that MPS State intervention in 2017 was not of a temporary nature but was both preceded and followed by several additional State contributions, thereby breaching the conditions set out in Article 32(4)(d) of the BRRD.</p> <p>12. The request to commit to trial issued by the Prosecutor's Office on <u>December 22, 2022</u> (Tribunal of Milan, Annex 1.63) against former MPS executives (and others), accused of having omitted to book loan loss provisions in MPS's 2012–2015 financial statements.</p> <p>The <u>new</u> evidence indicates the existence of sufficient elements gathered by the judicial authorities, suggesting that MPS executives may have <u>also</u> committed a crime by failing to record</p>
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⁵⁹ last trading price of MPS share before suspension on December 23, 2016 was euro 15.08 per share, with MPS capital consisting of 29,320,798 ordinary shares, **MPS, Annex 9.18**)

⁶⁰ the reference trading date used by MPS to set the terms of the Rights Offer for euro 2.5 billion of which euro 1.6 billion subscribed and underwritten by the MEF

⁶¹ The information is derived from the number of shares before the capital increase (10,024,058; **MPS, Annex 1.178**), the number of new shares issued (1,249,665,648), the issue price (euro 2), and the 7.79% discount on the issue price compared to the TERP on the reference date (October 11, 2022) (**MPS, Annex 10.161**). The pre-money valuation of MPS amounted to:

$\{[2 / (1 - 7.79\%) \times (10,024,058 + 1,249,665,648)] - (2 \times 1,249,665,648)\} = \text{euro } 232,887,999$

	<p>loan loss provisions for multiple billion euro between 2012 and 2015.⁶²</p> <p>13. The order to commit to trial issued by the Tribunal of Milan (Office of the Judge for Preliminary Investigations) on <u>May 24, 2024</u> (Tribunal of Milan, Annex 1.104), against former MPS executives (and others), accused of having omitted to book loan loss provisions in MPS's 2016–2017 financial statement</p> <p>The <u>new</u> evidence indicates the existence of sufficient elements gathered by the judicial authorities, suggesting that MPS executives may have <u>also</u> committed a crime by failing to record loan loss provisions for multiple billion euros <u>also</u> in 2016 and 2017⁶³.</p> <p>This is a particularly significant <u>new</u> piece of information, as it points to alleged criminal responsibility for the misrepresentation of the financial statements used as a basis for the “<i>precautionary recapitalization</i>,” which in turn formed the foundation for the representations made to DG Comp in order to obtain its authorization.</p> <p>14. The orders to open a criminal investigation issued by the Tribunal of Milan (Office of the Judge for Preliminary Investigations) on <u>May 24, 2024</u> (Tribunal of Milan, Annex 1.104) and <u>July 16, 2024</u> (Tribunal of Milan, Annex 1.109) against former MPS executives (and others), accused of allegedly defrauding the State in relation to the “<i>precautionary recapitalization</i>”.</p> <p>The <u>new</u> evidence indicates, that - to use the very words of the Milan Tribunal - “<i>it does not seem far-fetched that the false corporate communications may have misled the granting authority, thereby securing public funding unjustly, in the</i></p>
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⁶² Milan Tribunal, Criminal Proceedings No. 33714/2016 R.G.N.R.

⁶³ Milan Tribunal, Criminal Proceedings No. 29877/22 R.G.N.R.

	<p>absence of the conditions that would have justified it” (Tribunal of Milan, Annex 1.104, translation)⁶⁴.</p> <p>The Tribunal ordered the opening of an investigation with the aim of ascertaining the alleged mis-representations made by MPS executives regarding the fulfilment of the conditions set out in Article 32(4)(d) of the BRRD Directive, and instructed a court-appointed expert opinion to ascertain “(i) whether at least two of the conditions provided by the BRRD Directive for the admissibility of the 'precautionary recapitalization' regime were met in the present case (namely, that the permitted form of public support through precautionary recapitalization complies with the conditions, including that such support is directed only to banks not subject to resolution or liquidation; moreover, it cannot be used to cover actual or expected losses); (ii) whether, at the time the precautionary recapitalization was finalized, BMPS held the minimum capital required to access the indicated procedure; (iii) the losses resulting from the analysis of the 2016 and 2017 financial statements and the interim reports; (iv) the accuracy of the financial data provided and communicated to the competent authorities in order to obtain state aid; (v) any discrepancies between the contents of the report from the ECB inspection conducted at MPS and what the Bank itself communicated to the market prior to receiving state aid; (vi) the impact of the lack of provisions and omitted adjustments in relation to the finalization of the capital increase supporting the precautionary recapitalization; (vii) how the Bank used the euro 5.4 billion paid by the State in the form of precautionary recapitalization - specifically, whether it was used to cover undeclared losses or for other purposes”(Milan Court, Office of the Judge for Preliminary Investigations, May 28, 2024, Tribunal of Milan, Annex 1.104, translation)⁶⁵.</p>
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⁶⁴ Original text: “non appare peregrino che le false comunicazioni sociali abbiano potuto indurre in errore l'ente erogatore, in modo da conseguire indebitamente un finanziamento pubblico in assenza dei presupposti che lo legittimavano” (Tribunal of Milan, Annex 1.104)

⁶⁵ Original text: “(i) alla sussistenza nel caso di specie di almeno due delle condizioni previste dalla direttiva BRRD per l'ammissibilità del regime della "ricapitalizzazione precauzionale" (il sostegno pubblico in forma di ricapitalizzazione precauzionale è consentito se è rispettato, tra le altre condizioni, l'indirizzamento del sostegno a sole banche non da sottoporre a risoluzione o liquidazione; inoltre, non può utilizzarsi per ripianare perdite, attuali o attese); (ii) alla sussistenza, alla data di perfezionamento della ricapitalizzazione precauzionale, in capo a BMPS, di un capitale minimo richiesto per l'accesso alla procedura indicata; (iii) alle perdite risultanti dall'analisi dei bilanci 2016, 2017 e dalle

	<p>This is a particularly significant new piece of information, as it points to alleged criminal responsibility for the misrepresentation of the conditions set out in Article 32(4)(d) of the BRRD, which are central to determining the unlawful nature of the State aid authorized by DG Comp on July 4, 2017.</p> <p>15. On 6 June 2025 the Preliminary Investigation Judge ordered that former MPS CEO Alessandro Viola, former Chairmen Alessandro Profumo and Massimo Tononi, as well as the officer in charge of financial reporting, Arturo Betunio, stand trial - with the first hearing scheduled for 16 October 2025.</p> <p>They are to face charges of false corporate communications, market manipulation, and prospectus fraud, in connection with the concealment of euro 7,55 billion in loan losses as of 31 December 2015. These are the very losses that were subsequently covered through the 2017 State aid measures, and whose concealment served to mask the fact that, in 2017, MPS was technically insolvent.</p> <p>The <u>new</u> information referred to in recitals 12 to 15 relates to ongoing judicial proceedings and, as such, should be considered sub judice.</p> <p>Nonetheless, these proceedings demonstrate the existence of sufficient elements, that it would be unreasonable to disregard, for the DG Comp to open a formal investigation under Article 12(1) of Council Regulation (EU) 2015/1589, with a view to assessing a potential violation of State aid rules. The fact that national judicial authorities have deemed it necessary to investigate a potential breach of criminal law linked to the same facts underscores their seriousness.</p>
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relazioni intermedie; (iv) alla correttezza dei dati di bilancio forniti e comunicati agli organi preposti al fine di ottenere gli aiuti di Stato; (v) alla eventuale discrasia riscontrabile tra il contenuto del rapporto relativo all'ispezione condotta dalla BCE presso MPS e quanto comunicato dalla medesima Banca al mercato prima dell'accesso agli aiuti di Stato; (vi) alla incidenza dei mancati accantonamenti e delle omesse rettifiche ai fini del perfezionamento dell'aumento di capitale a servizio della ricapitalizzazione precauzionale; (vii) all'utilizzo fatto dalla Banca della somma di euro 5,4 miliardi di euro versata dallo Stato nella forma di ricapitalizzazione precauzionale, in particolare se per ripianare perdite non dichiarate o per scopi diversi" (Tribunal of Milan, Annex 1.104)

	<p>It would be illogical for the Commission not to act, given that the purpose of the criminal proceedings - ascertaining individual criminal responsibility - differs from the Commission's mandate to assess the legality of State aid.</p> <p>The Commission is not required to wait for the outcome of national investigations, nor would such a delay be justified.</p> <p>On the contrary, it must carry out its own autonomous assessment within the scope of its competence, as postponing action or deferring to criminal proceedings would amount to an abdication of its institutional responsibilities.</p> <p>The mere existence of criminal investigations, in itself, should prompt the Commission to open a formal investigation of its own, within the limits of its jurisdiction.</p> <p>Moreover, the powers of the Commission to recover aid are subject to a limitation period of ten years.</p> <p>The limitation period begins on the day on which the unlawful aid is awarded to the beneficiary (August 2017, for MPS State aid approved with Decision C(2017)4690 final (July 4, 2017)).</p> <p>Any action taken by the Commission with regard to the unlawful aid interrupts the limitation period and each interruption shall start time running afresh.</p> <p>The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union (as per Art. 17 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification)).</p> <p>For this additional reason and being fully aware of the existence of parallel criminal proceedings, DG Comp should suspend the statute of limitations and initiate its own assessments. These assessments do not concern the commission of potential crimes (a task for the judicial authorities) but focus on evaluating the new evidence acquired (recitals 1-11) to ascertain any violations under EU State aid law.</p> <p style="text-align: center;">*</p>
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	<p>ADDITIONAL ALLEGED BREACHES</p> <p>Based on the new evidence, it appears that:</p> <ul style="list-style-type: none"> - MPS, from 2012 to 2017, did not comply with it fulfils the 4.5% Pillar 1 CET1 and 8% Pillar 1 Total capital requirement established in Article 92 of the CRR⁶⁶. - MPS, from 2012 to 2017, did not comply with CRD IV⁶⁷, Art.74 which requires banks to have in place processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures. This includes processes in order to identify impaired and defaulted exposures as defined by IAS 39 and CRR 178. SSM regulation art.16, para 2 lit.d, entitles ECB to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements. - MPS, from 2012 to 2017, did not comply with International Accounting Standards (IAS 1, IAS 8 and IAS 39)⁶⁸.
Measure 2	<p>Preliminarily, we note that <i>Measure 2</i> was not notified by the State to the DG Comp as State aid - presumably relying on representations leading to the determination that it did not constitute State aid⁶⁹.</p> <p>This appears to be contradicted by the following evidence:</p> <p>1. the press release issued by MPS on <u>June 29, 2020</u> (MPS, Annex 10.149)</p> <p>The evidence indicates that MPS, then 68,24% controlled by the MEF, entered into an agreement to sell a euro 3,6 billion portfolio of non-performing loans to a company (AMCO) fully owned by the MEF (MPS, Annex 10.149).</p>

⁶⁶ Regulation (EU) no 575/2013 of the European Parliament and of the council of June 23, 2013 on prudential requirements for credit institutions and investment firms and amending regulation (EU) no 648/2012 (OJ L 176, 27.6.2013, p.1)

⁶⁷ Capital Requirement Directive 2013/36/EU

⁶⁸ Regulation (EC) no 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards

⁶⁹ "Taking into account the discussions with the Directorate-General for Competition of the European Commission, conducted by MPS, AMCO, and the Ministry in order to verify the absence of State aid elements in the Derisking Operation—under the conditions and terms represented by the parties involved—and the corresponding positive feedback received" (Law Decree, Annex 15.215)

	<p>2. Presidential decree issued on October 16, 2020 (Law Decree, Annex 15.215)</p> <p>The sale of the non-performing loan to AMCO was approved with a decree issued by the President of the Italian Council of Ministers on October 16, 2020 (Law Decree, Annex 15.215).</p> <p>According to the text of the decree, <i>“starting from the end of 2018, the Ministry of Economy and Finance, the management of AMCO, and the management of Banca MPS explored the feasibility of an extraordinary transaction (hereinafter the 'Derisking Operation') involving a non-proportional demerger from Banca MPS to AMCO (hereinafter the 'Demerger') of a business unit consisting, on the asset side, of a portion of non-performing loans and deferred tax assets ('DTAs'), and, on the liability side, of debt and equity (the 'Business Unit')”</i> (Law Decree, Annex 15.215, translation).</p> <p>No public reference was made by MPS to a tender process or any explanation provided as to how MPS selected AMCO as its counterparty of choice for the sale, or whether any other prospective buyers were considered.</p> <p>3. MPS financial statement as of June 30, 2020, published on August 12, 2020 (MPS, Annex 9.37)</p> <p>The evidence indicates that in 2020, MPS’s auditors (PwC) drew attention to the Bank's assumption of preparing the financial statements on a <i>"going concern"</i>⁷⁰ basis, thereby highlighting the situation of potential financial distress and lack of capital.</p>
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⁷⁰ “Going concern - The Condensed Consolidated Half-Yearly Financial Statements as at 30 June 2020 were prepared based on a going concern assumption. With regard to the indications contained in Document no. 2 of 6 February 2009 and Document no. 4 of 3 March 2010, issued jointly by the Bank of Italy, Consob and ISVAP, and subsequent amendments, **the Group reasonably expects to continue operating as a going concern in the foreseeable future** and has therefore prepared the condensed consolidated half-yearly financial statements as at 30 June 2020 under the going concern assumption. In fact, the Group has a reasonable expectation that it will continue to operate also in the changed macroeconomic scenario, which is heavily penalised by the COVID-19 pandemic. In this regard, despite the expected negative repercussions on the performance of some types of revenues and the cost of credit, and the presence of elements of chance and risk described in the section “Disclosure on risks”, it is believed that the Group can continue to operate as a going concern in the foreseeable future, with capital ratios exceeding regulatory requirements. In this context, it is important to highlight that the MEF, as the controlling shareholder, in compliance with the 2017-2021 Restructuring Plan, has committed to proceed with the disposal of the equity investment by the end of 2021. This conclusion also takes into consideration the significant government interventions in support of businesses and households, the targeted monetary policy initiatives of central banks, and the measures to temporarily loosen regulatory requirements”. (MPS financial statement as of 30 June 2020, **MPS, Annex 9.37**)

	<p>4. MPS financial statement as of September 30, 2020, published on November 13, 2020 (MPS, Annex 9.38)</p> <p>The evidence indicates that MPS was facing (once again) a new “<i>capital shortfall</i>” of such magnitude that it undermined the assumption of business continuity, rendering the bank viable only in light of unspecified commitments by the MEF to provide the necessary capital support in the future to ensure compliance with minimum capital requirements.^{71,72,73,74}.</p> <p>5. The news flow from the press on November 13, 2020 (ANSA, Annex 14.46)</p> <p>Following MPS's disclosure of its Q3 2020 results, due to the significance, importance, and unexpected nature of the developments, the news was immediately reported by major news agencies. “<i>MPS will not be able to meet the minimum requirements set by the ECB</i>” noting that “<i>in this context, the MEF has guaranteed the necessary capital support in the future to ensure compliance with the minimum capital requirements</i>” (ANSA, Annex 14.46, translation).</p> <p>6. the documentation prepared by MPS for the shareholders’ meeting of <u>4 October 2020</u> (MPS, Annexes 10.151 and 10.152)</p> <p>The evidence indicates that:</p>
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⁷¹ “Furthermore, following the provisions for legal risks made in the third quarter of 2020 and the updated estimates of the impacts of regulatory headwinds and of the persisting pandemic, the Parent Company updated the capital adequacy projections prepared in the context of the application to the ECB for the Hydra transaction. From this update, a prospective shortfall with respect to SREP capital requirements emerged, with respect to which capital strengthening initiatives are being evaluated” (MPS, Annex 9.38, p. 38)

⁷² “In this regard, it should be noted that following i) the significant provisions on legal risks made in the third quarter of 2020, ii) the prospective effects of the Hydra transaction, iii) the penalising impact of the COVID-19 pandemic on the macroeconomic scenario and iv) regulatory headwinds, a capital shortfall is expected with respect to SREP capital requirements. Therefore, capital strengthening initiatives are being evaluated with the full support of the controlling shareholder.” (MPS, Annex 9.38, p. 51)

⁷³ “In this context, the MEF reiterated its support for the Hydra transaction; its intention to respect the commitments undertaken by the Italian Republic towards the European Union and to carry out a market transaction identifying an anchor investor and/or banking partner of adequate standing, in order to restore and ensure the Bank’s competitiveness; any capital support that may become necessary in the future to ensure compliance with minimum capital requirements.” (MPS, Annex 9.38, p. 39 e p. 51)

⁷⁴ “In light of these elements and with regard to the indications contained in Document no. 2 of 6 February 2009 and Document no. 4 of 3 March 2010, issued jointly by the Bank of Italy, Consob and ISVAP, and subsequent amendments, the Group reasonably expects to continue operating as a going concern in the foreseeable future and has therefore prepared the Interim Report on Operations as at 30 September 2020 under the going concern assumption” (MPS, Annex 9.38, p. 51).

	<ul style="list-style-type: none"> - MPS claimed that “<i>the Transaction is part of the wider de-risking project approved by the relevant Authorities in the context of the 2017-2021 Bank’s restructuring plan and launched by the Bank to divest its portfolio of non-performing exposures to allow for a benefit in the medium-term in terms of improved capital ratios and, as soon as the Demerger is finalised and effective, to reduce the Italian Ministry of Economic and Finance’s (“MEF”) shareholding in the Bank in compliance with the Bank’s commitments to the Directorate General for Competition of the European Commission (“DG Comp”)</i>” (MPS, Annex 10.152). <p>However, the transaction did not fall within the commitments made as part of the authorization for the “<i>precautionary recapitalization</i>”, which only concerned the sale of the portfolio of “<i>EUR 26.1 billion GBV (value at 31/12/2016) bad loans portfolio</i>”⁷⁵, that had been announced on July 29, 2016 (MPS, Annex 10.57), had become the subject of a transfer agreement to a private fund on June 26, 2017 (MPS, Annex 9.33)⁷⁶, and had been completed on January 9, 2018 (MPS, Annex 10.154)⁷⁷.</p> <ul style="list-style-type: none"> - the sale of the not-performing portfolio was executed at book-value and not at fair market value. <p>Since both MPS (the Demerged Company) and AMCO (the Beneficiary Company) were fully controlled by the State, the parties qualified as companies under common</p>
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⁷⁵“**Commitment N. 16: Disposal of NPLs:** the Bank shall achieve de-recognition of EUR 26.1 billion GBV (value at 31/12/2016)] bad loans portfolio within the timeframe of 30/06/2018 and as detailed in the Decision” (EC Decision C(2017) 4690 final, **DG Comp, Annex 15.108**)

⁷⁶ In the financial statements as of June 30, 2017, the Bank reported that “*On 26 June 2017, a binding agreement was entered into with the Atlante Fund (managed by Quaestio Capital Management SGR S.p.A.) for the acquisition of 95% of the junior and mezzanine notes as part of the assignment of doubtful loans (for further details, please refer to the section “The doubtful loan disposal transaction”)*” per la “*deconsolidate a portfolio of doubtful loans of EUR 26.1 billion, strengthening of risk control oversight, restrictions on proprietary finance activities in terms of*” (MPS, **Annex 9.33**).

⁷⁷ On December 22, 2017, the Bank informed the market “*that today signed an agreement with Quaestio Capital SGR S.p.A., on behalf of the Italian Recovery Fund (former Atlante II Fund), for the disposal of 95% of the mezzanine notes relating to the securitization of MPS Group’s bad debts portfolio. This transaction, to be effective from January 9, 2018, is part of the agreements signed with Quaestio Capital SGR SpA. on 26 June 2017 and is an integral part of the Restructuring Plan announced on 5 July 2017. It should be noted that the deconsolidation of the bad loans portfolio will take place by June 2018 with the transfer of the junior notes and that in any case the economic impacts of the securitization, further, to being included in the Restructuring Plan, have been fully included in the half-year report at 30 June 2017*” (MPS, **Annex 10.154**).

	<p>control for the purposes of IFRS 3 (Business Combinations).</p> <p>Therefore, the sale of the non-performing loan portfolio was accounted for at book value, rather than at fair market value: <i>“Since the Demerger is carried out seamlessly as to accounting values, as it takes place between entities subject to common control by the Italian Ministry of Economy and Finance, the Beneficiary Company records the Demerged Compendium, in its financial statements, at the accounting values of the Demerged Company”</i> (MPS, Annex 10.152)</p> <p>From the MEF’s perspective, the demerger involved a simple transfer of assets and liabilities from one State-controlled subsidiary (MPS) to another (AMCO).</p> <p>As of the completion date, the transfer was accounted for using the principle of continuity of values - meaning the assets and liabilities were recorded at their book values as per MPS’s accounts, without fair value adjustments. This avoided recognizing any negative capital contribution arising from differences between book and market values. MPS derecognized the transferred items, leading to a reduction in its shareholders' equity.</p> <p>Until the demerger took effect, the transferred assets were valued according to MPS’s accounting policies.</p> <p>7. the press release issued by MPS on <u>December 1, 2020</u> (MPS, Annex 10.156)</p> <p>The evidence indicates the completion of the transaction on December 1, 2020.</p> <p>8. The press releases issued by MPS on <u>December 17, 2020</u> (MPS, Annex 10.155) and <u>January 28, 2021</u> (MPS, Annex 10.159)</p> <p>The <u>new</u> evidence indicates that MPS in 2020 faced a new capital shortfall (euro 2,5 billion) which required also an additional State capital contribution of euro 1,6 billion euro (Measure 3).</p>
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	<p>9. the press release issued by the State-owned company AMCO on <u>March 8, 2022</u> (AMCO, Annex 15.217).</p> <p><u>The evidence indicates that MPS received a consideration for the sale of a portfolio of non-performing loans to AMCO that was euro 529 million higher than AMCO’s own valuation.</u></p> <p>As a result, AMCO had to record a corresponding write-down of euro 529 million in its 2021 financial statements. <i>“the application of AMCO's provisioning policies to the MPS portfolio resulted in one-off provisions e of euro 529 million and a stated loss of euro 422million”</i> (AMCO, Annex 15.217).</p> <p>10. MPS press release announcing financial results as of September 30, 2016 (MPS, Annex 10.82), December 31, 2016 (MPS, Annex 10.83), and June 30, 2017 (MPS, Annex 10.84); MPS financial statement as of June 30, 2017 (MPS, Annex 9.32); the ECB report dated <u>June 2, 2017</u> (Annex 7.1); the independent expert opinion prepared by Professors Gaetano Bellavia and Dr. Fulvia Ferradini, filed on April <u>21, 2021</u> (Annex 19.26) and the EU parliamentary hearing of Dr. Andrea Enria, Chair of the ECB’s Single Supervisory Mechanism, held on <u>August 6, 2019</u> (ECB, Annex 7.11).</p> <p>The evidence indicated that, of the euro 7,55 billion in additional loan loss provisions needed - as identified by the ECB as of 1 December 2015⁷⁸ and confirmed as omitted adjustments in the Bellavia-Ferradini expert report^{79,80}, as well as acknowledged during the parliamentary hearing of the ECB SSM Chair⁸¹ - MPS had recorded extraordinary loan losses provisions of euro 7,03 billion by the end of 2017.</p>
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⁷⁸ “the inspection estimates the need for additional provisions to euro 7.55bn, to be compared to euro 22.7bn existing provisions at 31.12.2015” (ECB, Annex 17.1, p. 8)

⁷⁹ “In summary, and in relation to the capital increases that occurred during those years, it was found that the net provisions for credit write-downs not recorded in the financial years discussed, totalling euro 11,420.81 million, or euro 7,766.15 million net of the tax effect, are of an amount nearly identical to the capital increases that took place between 2014 and 2015, which amounted to euro 8 billion as previously stated” (Annex 19.26, p. 5645, translation).

⁸⁰ “There have never been any changes, either in the regulations or in the accounting principles regarding the classification and valuation of loans, during the period under review, that could have in any way justified the enormous, omitted provisions, which the supervisory inspection has clearly highlighted in the detailed examination of the legacy positions discussed in the previous chapters” (Annex 19.26, p. 5568, translation)

⁸¹ “Indeed, the need for additional provisions revealed by the OSI report of June 2017 (based on a portfolio reference date of 31 December 2015) was considered to largely overlap with (i) losses already booked by MPS in its financial

	<p>These were booked as follows: euro 749,9 million in 3Q 2016⁸², euro 1.842 billion in 4Q 2016⁸³, euro 4,0 billion in 2Q 2017 and euro 435 million in 4Q 2017⁸⁴.</p> <p>However, euro 523 million⁸⁵ remained unrecorded: this amount closely matches the higher purchase value paid by AMCO for the non-performing loans (euro 529 million).</p> <p>11. MPS financial statement as of December 31, 2020 (MPS, Annex 9.39)</p> <p>The evidence indicates that the sale of non-performing loans to AMCO was not unconditional but included certain arrangements with MPS personnel seconded to AMCO^{86, 87} - as conformed by AMCO - as well as the possible bundling of</p>
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statements as at 31 December 2016 and 31 March 2017, or (ii) losses estimated to arise from the bad loans disposal requested by the European authorities as a key pillar of the restructuring plan underlying the precautionary recapitalisation of MPS. These overlaps were confirmed by MPS and supported by its external auditors. Where no overlap could be confirmed, the ECB asked for the provisions to be booked. **As stated in its decision on the granting of State aid, the European Commission concluded that the precautionary recapitalisation (capital support) was not used to offset losses that the bank had incurred or was likely to incur in the near future**" (ECB, Annex 7.11)

⁸² In the press release, the Bank stated that the credit adjustments amounting to euro 2,021.6 million in the first nine months of the year included "the extraordinary component related to the revision of the credit policy", without which "they would have amounted to euro 1,272 million" which means that the Bank recorded **euro 749.5 million** in adjustments (euro 2,021.6 million minus euro 1,272 million), which were described as an "extraordinary component related to the revision of the credit policy" (MPS, Annex 10.82, translation),

⁸³ "Net impairment losses for the fourth quarter of 2016 amounted to approximately euro 2,482 million (+euro 1,180 million quarter-on-quarter) and include around **euro 1,842 million in adjustments** related to changes in accounting policies. The coverage ratio for non-performing loans, at 55.6%, increased by approximately 716 basis points year-on-year (+500 basis points quarter-on-quarter), mainly due to impairments recorded in the second half of the year." (MPS, Annex 10.83, translation)

⁸⁴ euro 250 million plus an additional euro 185 million, as explained in the MPS financial statement as of June 30, 2017: "Please also note that on 7 June 2017 the Bank received the final results of the on-site inspection conducted by the supervisory authority from May 2016 to February 2017. The inspection concerned the classification of loans, the levels of coverage and the valuation of collateral for non-performing loans, as at the date of 31 December 2015. The Bank, also as a result of the discussions with the inspection team, made assessments and analyses in 2016 which led to changes in the methodologies and parameters used for the valuation of non-performing loans, in accordance with the rationale and with the impacts described in Part A - Information about changes in accounting estimates in the 2016 financial statements. Following the assessments conducted, in the 2016 financial statements the Bank recognised higher impairment losses on some positions subject to analytical assessment by the ECB inspectors (credit file review) on the basis of the position deterioration events that took place in 2016 and in compliance with the Group's accounting policies. The ECB recognised that the additional valuation differences, also caused by the use of statistical methods for the projection of the results obtained, overlap in large part with the impairment losses recognised by the Bank in the past year, as well as with the losses deriving from the disposal of the doubtful loan portfolio, with the estimated effects of the transition to IFRS 9 and with the operations for the reduction of non-performing loans set forth in the Restructuring Plan. Although the supervisory authority acknowledged this overlap, it expects the residual difference from the credit file review, equal to **EUR 250 mln**, net, that is, of the above-mentioned overlaps, to be reflected in the accounting by the end of 2017 and the residual difference deriving from the use of statistical projections, equal to **EUR 185 mln**, again net of the above-mentioned overlaps, to be adequately evaluated" (MPS, 1H2017, MPS, Annex 9.32)

⁸⁵ $7.550 - 749,9 - 1.842 - 4.000 - 435 = 523$

⁸⁶ "secondment [agreement] to AMCO" (MPS, Annex 9.39)

⁸⁷ "With regard to the Head-Office structures, actions were also implemented to support some reorganisation processes, including: - activities related to the process of transferring the package of non-performing loans and other liabilities to AMCO, which - on the HR Management side - entailed the secondment of 88 resources to the commercial partner and the reorganisation of the Non-Performing Loans Department with the creation of two new Sectors" (MPS, Annex 9.39)

	<p>an asset sale with services related to those assets, which were not essential to that end.</p> <p>This may represent the imposition of conditions that would not have been imposed by a private market economy buyer.</p> <p>The information outlined in recitals 1–11 appears to indicate that the sale of the portfolio of non-performing loans to a wholly State-owned company (AMCO) may not have met the criteria of transparency, unconditionality, and non-discrimination required to rule out the presence of State aid.</p> <p>The assets appear to have been sold at a euro 529 million premium, conferring a selective and undisclosed advantage to MPS, leveraging an accounting treatment available exclusively between parties subject to “common control” (MPS, AMCO).</p> <p>Furthermore, the acceptance of terms unlikely to be accepted by a private market operator - such as acquiring the portfolio at book value and the secondment of certain MPS personnel to AMCO - raises additional concerns.</p>
Measure 3	<p>Preliminarily, we note that <i>Measure 3</i> was not notified to the DG Competition as State aid - presumably relying on representations which led to believe the measure did not constitute State aid.</p> <p>This appears to be contradicted by the following evidence and considerations:</p> <ol style="list-style-type: none"> 1. State intervention under <i>Measure 3</i> is a direct consequence of State intervention under <i>Measure 1</i>, which is allegedly unlawful state aid. <p><i>Measure 3</i> resulted in a State contribution of euro 1,6 billion through the exercise of pre-emptive rights⁸⁸, by the MEF, acting as a 64.23% shareholder - a position acquired under <i>Measure 1</i>.</p>

⁸⁸ “the Capital Increase is a capital increase against payment, to be offered for subscription to shareholders holding ordinary shares of the Company, e) pursuant to article 2441 of the Civil Code **for a maximum amount of Euro 2,500,000,000.00, in divisible form**, to be fully allocated to capital, to be carried out, by issuing ordinary shares with regular dividend entitlement, providing that **if the Capital Increase is not fully subscribed by the deadline for its subscription, the share capital shall be deemed to be increased by an amount equal to the subscriptions collected by that date**” (MPS, Annex 10.157).

	<p>If DG COMP were to determine that <i>Measure 1</i> was unlawful and issue a recovery decision, <i>Measure 3</i> should also be subject to a recovery decision, as <i>Measure 1</i> constitutes the legal basis for <i>Measure 3</i>.</p> <p>In other words, if <i>Measure 1</i> were considered unlawful aid, then <i>Measure 3</i> would also be deemed unlawful.</p> <p>2. The market capitalization of MPS at the time of pricing the Rights Offer (October 12, 2022) was close to zero.</p> <p>MPS's market capitalization, based on the official stock exchange price of MPS ordinary shares as of October 11, 2022 - which was used as a reference to set the terms of the rights offering (MPS, Annex 10.161) - was approximately euro 233 million (MPS, Annex 10.161 and 10.179)⁸⁹.</p> <p>MPS had virtually lost all its value following the euro 5,4 billion State capital injection in 2017⁹⁰, the euro 3,0 billion capital increase in 2015, and the euro 5,0 billion capital increase in 2013, all of which had evidently been entirely wiped out.</p> <p>This was a clear indication that the market, based on the correct interpretation of laws, rules and regulations, was expecting MPS to fail.</p> <p>3. The Rights Offer does not appear to qualify as a market transaction.</p> <p>The Rights Offer was priced at a 7,79% discount relative to the Theoretical Ex-Rights Price (TERP) (MPS, Annexes 10.161 and 10.178).</p> <p>The discount appears off-market, as transactions of this nature typically involve a discount of at least 30% to TERP, in line with MPS's own previous rights offerings⁹¹.</p>
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⁸⁹ The information is derived from the number of shares before the capital increase (10,024,058; MPS, Annex 1.179), the number of new shares issued (1,249,665,648), the issue price (euro 2), and the 7.79% discount on the issue price compared to the TERP on the reference date (October 11, 2022) (MPS, Annex 10.161). The pre-money valuation of MPS amounted to:

$$\{[2 / (1 - 7.79\%) \times (10,024,058 + 1,249,665,648)] - (2 \times 1,249,665,648)\} = \text{euro } 232,887,999$$

⁹⁰ Of which euro 5,4 billion contributed from the State and euro 2,9 billion from the private sector ("burden sharing", net of the result of the voluntary Exchange Offer of the holders of Upper Tier II bonds))

⁹¹ MPS rights offering executed in 2014 (euro 5 billion) was priced at a 35.5% discount to TERP ((MPS, Annex 10.162), and the 2015 rights offering (euro 3 billion) at a 38,9% discount to TERP (MPS, Annex 10.163). Given the deteriorating financial condition of the Bank since 2014/2015, the discount should have been higher, not lower.

	<p>It was technically impossible to set an appropriate market-based discount, given that MPS's market capitalization was effectively close to zero (approximately euro 233 million) compared to the new capital injection of euro 2,5 billion.</p> <p>This situation explains why the Rights Offer could not have been possibly completed as a market transaction, without State intervention.</p> <p>4. Based on their trading price, the rights were effectively worthless, which further raises concerns about the Rights Offer's compliance with <i>bona fide</i> market conditions.</p> <p>Both the option rights for the subscription of new MPS shares (ISIN code IT0005509002) and the unexercised rights offered on the stock exchange (ISIN code IT0005509010) at the end of the offering period expired worthless (MPS, Annex 10.166 and 10.167).</p> <p>This confirms that the Rights Offer was not conducted at market conditions and could not attract investors making economically rational decisions.</p> <p>5. Under the Rights Offer, the State was offered and acquired shares at a 14,6% premium relative to other participants in the offering.</p> <p>MPS entered into an underwriting agreement with a consortium of banks (the “Guarantors”) and agreed to pay an underwriting fee of euro 125 million (MPS, Annex 9.52)⁹².</p> <p>To an uninformed observer, it may seem that MPS paid an underwriting fee of 5,0%⁹³, which corresponds to the upper end of the market standard price range (4,0% to 5,0%) for underwriting fees in such transactions (rights offerings) at the time also in line with MPS prior transactions.</p> <p>Moreover, it could appear that the agreed 5,0% underwriting fee aligns with the underwriting fees paid by MPS for its previous rights offerings, which fell within the 4,0% to 5,0% range: MPS</p>
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⁹² plus, additional euro 7 million of other expenses (i.e. legal fees etc.) (MPS, Annex 9.52) for a total transaction expenditure of euro 132 million

⁹³ euro 125 million divided by euro 2,500 million

	<p>paid an underwriting fee of 5,1% for the Rights Offer in 2014 (euro 255 million⁹⁴ divided by euro 5,0 billion, MPS, Annex 9.5) and 4,1% for the Rights Offer in 2015 (euro 125 million⁹⁵ divided by euro 3,0 billion, MPS, Annex 9.6), with an historical average of 4,6% for these two transactions.</p> <p>However, the reality is substantially different, and we will proceed to explain.</p> <p>On October 11, 2022, the State committed to subscribe to the Rights Offer (euro 2,5 billion) in proportion to its shareholding of 64,23%, thereby agreeing to subscribe euro 1,6 billion (MPS, Annex 10.164), as already anticipated by MPS on June 23, 2022 (MPS, Annex 10.165).</p> <p>Two days later, on October 13, 2022 (MPS, Annex 10.164), MPS entered into underwriting agreements for euro 857 million, comprising <i>(i)</i> euro 807 million with a consortium of banks⁹⁶ and <i>(ii)</i> euro 50 million with a single investor⁹⁷ (MPS, Annex 10.164).</p> <p>Additionally, on October 11 and 12, 2022, MPS entered into underwriting commitments for euro 37 million with certain other undisclosed investors (the “Direct Underwriters”), who did not receive any commission (MPS, Annex 10.164).</p> <p>Therefore, despite the headline underwriting fee being 5%, MPS effectively paid an underwriting fee of euro 125 million for a total underwriting commitment of euro 857 million: this translates into an effective underwriting fee of 14,6%⁹⁸.</p> <p>The underwriting fee paid by MPS (14,6%) is significantly higher (approx. 10% more) than the market standard for similar transactions (4,0% to 5,0%) including underwriting fees of MPS rights offerings.</p>
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⁹⁴ MPS disclosed total transaction costs including underwriting fees of euro 260 million (**MPS, Annex 9.5**), thus we assumed conservatively costs other than underwriting fee to be euro 5 million (vs. euro 7 million reported for the 2022 Rights Offering)

⁹⁵ MPS disclosed total transaction costs including underwriting fees of euro 130 million (**MPS, Annex 9.6**), thus we assumed conservatively costs other than underwriting fee to be euro 5 million (vs. euro 7 million reported for the 2022 Rights Offering)

⁹⁶ More specifically, BofA Securities Europe S.A., Citigroup Global Markets Limited, Credit Suisse Bank (Europe) S.A., Mediobanca - Banca di Credito Finanziario S.p.A., as joint global coordinators (the “**Joint Global Coordinators**”) and Banco Santander S.A., Barclays Bank Ireland PLC, Société Générale and Stifel Europe Bank AG, as joint bookrunners (the “**Joint Bookrunners**”) and jointly with the Joint Global Coordinators, the “**Guarantors**”)

⁹⁷ Algebris (UK) Limited (“**Algebris**”)

⁹⁸ euro 125 million divided by euro 857 million

	<p>This 10% extra payment is essentially a payment, allegedly disguised as an underwriting fee, made by MPS to certain market participants - including the consortium of underwriting banks and a single investor) to subscribe to the Rights Offer at a discount relative to the price paid by the State.</p> <p>The State effectively paid a 14,6% premium to subscribe to euro 1,6 billion of the Rights Offer, which allegedly represents an additional euro 233 million⁹⁹ in unlawful State aid.</p> <p>In practice, the advantage obtained by the beneficiary (MPS), should be considered greater than that, as the underwriting agreements with a consortium of banks and a single investor were subsequent to the MEF's commitment to subscribe euro 1,6 billion.</p> <p>In the absence of this commitment, it is realistic to assume that the underwriting agreements entered on October 13, 2022, would not have been concluded, or at least not under the conditions that were agreed upon.</p> <p>6. Approximately euro 400 million of the Rights Offer was subscribed by MPS's industrial partners (AXA, Anima) and certain holders of MPS subordinated debt (PIMCO and others), who did not act at arm's length and derived significant monetary benefits that were not available to the Italian State.</p> <p><u><i>MPS industrial partners: AXA and Anima</i></u></p> <p>According to widely reported news, which MPS did not deny, AXA - MPS's exclusive partner in its insurance joint venture - subscribed euro 200 million to the Rights Offer.</p> <p>AXA and MPS first partnered in 2007 when the French insurer acquired 50% of MPS's life and non-life insurance units, as well as its pension fund business.</p> <p>Had the Rights Offer failed, MPS would have faced the risk of being put into resolution, and AXA stood the risk of losing its insurance business with MPS, which generates annual dividends of around euro 100 million (MPS, Annex 9.54).</p>
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⁹⁹ 9.2% @1.6 billion contributed by the Italian State

	<p>While the preservation of future revenues under their existing commercial relationships already represents a significant benefit, making the participation of AXA in the Rights Offer not at arm's length and substantially more valuable than for the State, it cannot be ruled out (and should be investigated by DG COMP) that AXA obtained additional benefits in the form of more favourable terms under their existing commercial relationships (which should also be assessed by DG COMP), or simply the promise of more favourable terms as part of a potential renegotiation of their agreements before the end of 2023 (which should also be verified by DG COMP).</p> <p>The same considerations <u>also</u> apply to Anima, a long-standing partner of MPS in asset management, playing a role similar to that of AXA in relation to insurance products.</p> <p>Among the “<i>Main Pillars of the 2022-2026 Industrial Plan</i>” which highlighted the need for euro 2,5 billion as the basis for the capital increase, MPS indicated “<i>the goal of reaching the full commercial potential in wealth management through the established partnership with Anima</i>” (Financial Statements as of June 30, 2022, MPS, Annex 9.53).</p> <p>During 2022, the partnership with Anima was strengthened through new commercial initiatives: “<i>in terms of new products, the following should be noted: the placement of a window fund with bonus (intended for customers for the recovery of ‘winback’ and expiring CID [Italian Deposit Account]) called Anima PicPacESaloGo Bilanciato 2025 III</i>”; “<i>to enhance the Pac method of gradual investment in the financial markets, digital marketing activities were organised to communicate the Prize competitions of the Anima Partner aimed at subscribers of Accumulation Plans solutions at the BMPS Network</i>” (MPS Financial Statements as of December 31, 2022). In the 2022 Financial Statements, MPS highlighted the introduction in the UCITS catalogue of “<i>3 Anima SGR window funds</i>” and communicated that “<i>in 2022, the main releases concerned: the placement of 12 new Anima window fund</i>” (MPS Financial Statements as of December 31, 2022)</p>
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	<p><u><i>The holders of MPS's Subordinated Debt</i></u></p> <p>According to widespread news, which MPS did not deny, a significant portion of the Rights Offer was subscribed by PIMCO and other investors (e.g., BlueBay), who held large blocks of MPS subordinated debt (the “Subordinated Debt Holders”).</p> <p>The Subordinated Debt Holders extracted significant monetary benefits, otherwise unavailable to the State, from their participation in the Rights Offer in two predictable ways: <i>(i)</i> if the Rights Offer had failed, their subordinated debt holdings would have been wiped out due to the application of “<i>burden-sharing</i>” as part of the State aid intervention or the resolution of the Bank; <i>(ii)</i> the success of the Rights Offer ensured a significant uplift in the price of subordinated debt holdings, which is exactly what occurred (MPS, Annex 10.168, 10.169, 10.170, and 10.171): the price of MPS subordinated debt rose from 50% to 80% on October 10, 2022, immediately following the completion of the capital increase – a 30% uplift, representing a 60% price appreciation (MPS, Annex 10.168, 10.169, 10.170, and 10.171).</p> <p>Thus, it seems that Subordinated Debt Holders extracted significant benefits from their participation in the Rights Offer, which were not made available to the State.</p> <p>The participation of the Subordinate Debt Holders in the Rights Offer could be conservatively estimated to be in the range of euro 150 million to euro 200 million.</p> <p>In fact, on October 14, 2022, when MPS announced the underwriting commitments from the State (euro 1,6 billion), the consortium of banks (euro 807 million), Algebris (euro 50 million), and other undisclosed parties (euro 37 million), it also communicated that, <i>"without prejudice to the guarantee commitments set forth in the Underwriting Agreement, the Guarantors have entered into agreements with certain investors (the 'First Allocation Investors') for the purpose of reducing the risk arising from the Underwriting Agreement (the 'First Allocation Agreements') for a maximum total amount equal, as</i></p>
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	<p>at the date of this notice, to EUR 410,000,000.00 (the 'Maximum First Allocation Countervalue')" (MPS, Annex 10.164).</p> <p>Given that the MPS industrial partners (AXA, Anima) committed to subscribe euro 225 million, the remaining difference to euro 410 million likely corresponds to the commitment by MPS Subordinate debt Holders, estimated at euro 185 million.</p> <p>The advantage obtained by MPS's industrial partners (AXA, Anima) and certain holders of MPS subordinated debt (PIMCO and others), should be considered far greater, as the underwriting agreements were subsequent to the MEF's commitment to subscribe euro 1,6 billion.</p> <p>In the absence of this commitment, it is realistic to assume that the guarantee agreements would not have been concluded, or at least not under the conditions that were agreed upon.</p> <p>The information outlined in recitals 1 to 6 appears to indicate that Measure 3 may constitute unlawful State aid for the following reasons: (i) its legal basis relies on the assumption that Measure 1 did not constitute unlawful State aid; (ii) the transaction appears to have been carried out on non-market terms and, in any case, is disadvantageous to the MEF compared to other shareholders; and (iii) the subscription commitments made by the MEF conferred an undue advantage on MPS.</p> <p>In any case, should the DG Comp conclude that Measure 1 was unlawful, then Measure 3 would likewise be unlawful.</p>
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b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes/No

If yes, please attach copies of correspondence.

Measure 1	Yes	<p>The undersigned, Giuseppe Bivona, has repeatedly approached the European Commission concerning Measure 1, on the following dates:</p> <p>9 June 2019 (Annex 23.1), 2 July 2019 (Annex 23.3), 25 July 2019 (Annex 23.5), 2 January 2020 (Annex 23.7),</p>
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		13 December 2021 (Annex 23.9), 16 January 2022 (Annex 23.11), 12 January 2025 (Annex 23.19) and 2 February 2025 (Annex 23.21)
Measure 2	Yes	The undersigned has repeatedly approached the European Commission concerning <i>Measure 2</i> , on the following dates: 2 January 2020 (Annex 23.7) and 29 May 2022 (Annex 23.13)
Measure 3	Yes	The undersigned has repeatedly approached the European Commission concerning <i>Measure 3</i> , on the following dates: 29 May 2022 (Annex 23.13), 13 September 2022 (Annex 23.14), 18 September 2022 (Annex 23.15), 13 November 2022 (Annex 23.16), 16 November 2022 (Annex 23.18) and 2 February 2025 (Annex 23.21)
<p>Despite the repeated submissions - fully substantiated and accompanied by hundreds of supporting documents - the Commission has limited itself to polite acknowledgements of receipt, namely on 27 June 2019 (Annex 23.2), 23 July 2019 (Annex 23.4), 21 August 2019 (Annex 23.6), 19 February 2020 (Annex 23.8), 13 January 2022 (Annex 23.10), 3 February 2022 (Annex 23.12), 7 November 2022 (Annex 23.17), 21, 23, and 24 January 2025 (Annex 23.20), and 7 February 2025 (Annex 23.22), through which:</p> <ul style="list-style-type: none"> (i) It acknowledged receipt of the submissions. (ii) it failed to provide a substantive reply, merely referring in each instance to the previous communication. (iii) it effectively stated that it does not consider itself obliged to treat the reports as a formal complaint within the meaning of Article 24(2) of Council Regulation (EU) 2015/1589 and has limited itself to registering the undersigned's communications as market information. 		

c) Have you already approached national authorities or national courts concerning the same issue?

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Yes/No

<i>Measure 1</i>	Yes	<ul style="list-style-type: none">- The undersigned has reported to the judicial authorities the directors in office from time to time for having concealed loan losses amounting to euro 7.55 billion as of 31 December 2025 – to be covered using <i>Measure 1</i> - and that MPS was not solvent. Consequently, On 6 June 2025, the Preliminary Hearing Judge (Tribunal of Milan) ordered trial for former MPS CEO Fabrizio Viola and former Chairmen Alessandro Profumo and Paolo Tononi, who are now standing trial for false accounting, market manipulation, and prospectus fraud.- The undersigned has also reported to the judicial authorities the directors in office from time to time who requested and implemented <i>Measure 1</i>, for fraud against the State (under Article 640-bis of the Italian Criminal Code). Consequently, on 28 May 2024 (Annex 1.104) and 16 July 2024 (Annex 1.109), the Milan Court ordered the opening of an investigation into then MPS CEO Marco Morelli and former MPS Chair Alessandro Falciai and Stefania Bariatti, and others, aimed at determining whether the representations made in order to obtain the state aid under <i>Measure 1</i> were truthful and accurate, or whether fraud against the State was committed.
<i>Measure 2</i>	Not yet	
<i>Measure 3</i>	Not yet	

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

See above

d) Please provide any other information that may be relevant for the assessment of this case.

Measure 1	<p>In its State aid decision of July 4, 2017 (DG Comp, Annex 15.108), the European Commission demonstrated to be full aware of a specific inspection report issued by the ECB on June 2, 2017 (ECB, Annex 17.1) - just a few days before the ECB issued on June 28, 2017 its declaration stating that MPS was to be considered solvent.</p> <p>What follows is intended to acknowledge the existence of this inspection report which - based on the <u>new</u> evidence which became available after July 4, 2017 - can now be reinterpreted in a manner that fully supports and conforms the conclusion that <i>Measure 1</i> constituted indeed unlawful State aid.</p> <p style="text-align: center;">*</p> <p>The ECB's inspection report is mentioned in paragraphs (45)¹⁰⁰ and (133)¹⁰¹ of the DG Comp authorization.</p> <p>According to the ECB inspection report on MPS position as of December 31, 2015:</p> <ul style="list-style-type: none"> - <i>"The credit file review (CFR) carried out by the inspection team led to the identification of a number of debtors currently</i>
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¹⁰⁰ "In the same SREP decision, the ECB requires the Bank to take action to address its non-performing exposures ("NPEs"). In this respect the ECB requires the Bank: a) to align by year-end 2017 the carrying value of its bad loans portfolio to a level consistent with their disposal as outlined in the 2017 Restructuring Plan; b) to take into account the quantitative and qualitative requirements of the findings of the on-site inspection performed by the ECB. According to the final on-site inspection report of 7 June 2017, the Bank was required in the SREP decision to implement the following actions: i. to book in 2017 additional EUR 250 million of provisions relating to the credit files reviewed during the on-site inspection; ii. to determine together with the auditors the inclusion of additional EUR [150-200] million of provisions relating to projections of the findings in the reviewed portfolios and to determine the period in which these losses will have to be booked" (European Commission, **DG Comp, Annex 15.108**, p. 11-12)

¹⁰¹ "Losses incurred by the Bank after the 2016 stress test (which had the date of 31 December 2015 as cut-off point), i.e. losses reported in 2016 and in 1Q 2017 were already booked by the Bank in its accounts and charged against its equity. As for likely losses, those were estimated at EUR 4.4 billion and include: (i) losses of the disposal of bad loans, leasing and small tickets (EUR 4.2 billion) resulting from the difference between these assets' book value and their estimated sales price, and (ii) results of the ECB's on-site inspection which are not overlapping with past losses or losses from the bad loans transaction and hence still have to be booked by the Bank (EUR 0.25 billion). At the same time, the Bank disposes of private means which encompass: (i) excess capital above the minimum capital requirement of 4.5%⁶⁴ as of the last accounting period of 1Q 2017 (EUR 1.3 billion); (ii) certain proceeds to be received by the Bank from the sale of its merchant acquiring business (EUR 0.5 billion); and (iii) private capital generated from net burden-sharing, i.e. from the conversion of subordinated debt instruments into equity netted by the amount of compensation paid out by the Bank to misold retail investors (at least EUR 2.9 billion)" (European Commission, **DG Comp, Annex 15.108**, p. 11-12)

	<p><i>insufficiently covered...the inspection estimates the need for additional provisions to euro 7,55bn, to be compared to euro 22.7bn existing provisions at 31.12.2015” (ECB, Annex 17.1, p. 8).</i></p> <ul style="list-style-type: none"> - <i>“The major part of the calculated adjustment is, however, not yet booked. The CET-1 ratio after booking the result of the current On-Site Inspection would be 0,58% at the end of 2015, according to the estimation of the bank furnished on December 13, 2016” (ECB, Annex 17.1, p. 10).</i> - <i>“Monte dei Paschi di Siana, the oldest operating bank in the world, is facing risks related to its credit portfolio of existential dimension.” (ECB, Annex 17.1, p. 8).</i> - <i>“However, the magnitude of the findings and the limited viability of the credit business - looking only at the past proven and audited performances - are severe burdens on any restructuring plan” (ECB, Annex 17.1, p. 11).</i> - <i>“After the publication of results of Europe-wide stress tests in July 2016, it emerged as the weakest lender that was part of the exercise, showing, in the adverse scenario, a CET1 ratio of -2,2% in 2018” (ECB, Annex 17.1, p. 8).</i> - <i>“The credit file review (CFR) carried out by the inspection team led to the identification of a number of debtors currently insufficiently covered” (ECB, Annex 17.1, p. 8).</i> - <i>“The Credit File Review led to a significant number of reclassifications from PE to NPE categories,....furthermore, within NPE categories, a significant part of the NPE unlikely to pay exposures had to be reclassified to the NPE sofferenze (the reclassification rate represents 26% of the corporate and corporate sofferenze rettificate bucket and 53% for the SME bucket, less likely to have restructuring plans ongoing)” (ECB, Annex 17.1, p. 8).</i> - <i>“In June 2016, the bank received several bids of investors (CERBERUS, FORTRESS, HAYFIN) transmitted in June 2016 for a small selection of 43 large "bad loans" exposures. The gross book value was euro 0,257 bn and the net book value was euro 0,152bn, valued at euro 0,065-0,070bn by investors. The best bid</i>
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	<p>for these files amounts to 46% of the net book value, which corresponds to a provision rate of 83% (vs 40,8% recorded in the accounts)” (ECB, Annex 17.1, p. 9).</p> <ul style="list-style-type: none"> - “Referring to the underestimated key metrics (haircut, time to recovery), the bank itself has undertaken before the end of the on-site inspection a first extraordinary adjustment that represents euro 3 bn.... The major part of the calculated adjustment is, however, not yet booked” (ECB, Annex 17.1, p. 10). - “The main drivers for the provisioning adjustments were the collateral haircuts and the applied time to recovery, both significantly underestimated in the relevant policy of the bank (“1991”) (ECB, Annex 17.1, p. 9). - “Overall, the bank was found aware of the findings - even if disagreements persist especially on reclassifications - but without convincing arguments from the bank for the part of reclassifications maintained by the Inspection after all meetings and analysis of delivered documents” (ECB, Annex 17.1, p. 11). - “Analysing the reclassifications done by the present Inspection, it appears that 87% are concerning loans granted in 2010 and before, in line with some of the bank’s communication” (ECB, Annex 17.1, p. 11). - “The review of the collateral documentation in the sampled credit files revealed double or multi-counting of collaterals.” (ECB, Annex 17.1, p. 12). - “The key metrics used by the bank for estimating loan loss provisions - collateral haircuts, time to recovery and cure rates - are still underestimated” (ECB, Annex 17.1, p. 12). - “The magnitude of the findings and the limited viability of the credit business – looking only at the past proven and audited performances - are severe burdens on any restructuring plan.” (ECB, Annex 17.1, p. 11). <p>Moreover, between December 31, 2015 (reference date of the ECB inspection report), and July 4, 2017 (the date of the DG Comp authorization, DG Comp, Annex 15.108), MPS:</p> <ul style="list-style-type: none"> - had not raised external capital, as the attempted capital increase of five billion euros announced in July 2016 (MPS, Annex 10.57) and
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	<p>approved by the shareholders' meeting in November 2016 (MPS, Annex 10.92) was aborted in December 2016 (MPS, Annexes 10.94 and 10.54).</p> <ul style="list-style-type: none"> - had not generated internal capital, as it had incurred a loss of euro 3.241,1 million in 2016 (Annex 9.18) and a loss of euro 3.242,6 million as of June 30, 2017 (MPS, Annex 9.32), with a cumulative loss for the period from December 31, 2015, to June 30, 2017, amounting to euro 6.483,7 million. <p>Then in its statement of 28 June 2017, the ECB confirmed to the European Commission that MPS was solvent, stating that it fulfilled the 4.5% Pillar 1 CET 1 and 8% Pillar 1 Total Capital Requirement established in Article 92 of the CRR (European Commission, DG Comp, Annex 15.108, p. 25).</p> <p>The European Commission, "<u><i>based on the available information</i></u>", concluded that "<i>there are no elements which would give rise to serious doubts as to the ECB's underlying analysis of the solvency criterion. Moreover, the Commission has no objective reason to believe that neither of the circumstances referred to in point (a), (b) or (c) of Article 32(4)(d) BRRD are met</i>" (European Commission, DG Comp, Annex 15.108, p. 25).</p> <p style="text-align: center;">*</p> <p>That being said, <i>prima facie</i>, it appears that the ECB's inspection report dated June 2, 2017, contained statements that seem to contradict both the solvency declaration issued by the ECB few days later on June 28, 2017 and the alleged compliance with the conditions set out in Article 32(4)(d) of the BRRD as the basis for the DG Comp approval on July 4, 2017.</p> <p>Indeed, with reference to the ECB findings as of December 31, 2015, the inspectors report stated that "<i>the inspection estimates the need for additional provisions to euro 7,55 billion, to be compared to euro 22,7 billion existing provisions at 31.12.2015</i>" (ECB, Annex 17.1, p. 8), and consequently "<i>the CET-1 ratio after booking the result of the current On-Site Inspection would be 0,58% at the end of 2015</i>" (ECB, Annex 17.1, p. 10).</p>
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	<p>Given that MPS had not raised external capital or generated internal capital¹⁰² from December 31, 2015, to June 28, 2017 (the date of the solvency declaration issued by the ECB for MPS), and had recorded "<i>non-recurring provisions</i>" on loans for only euro 2,6 billion¹⁰³, the critical issues identified as of December 31, 2015, remained unchanged by June 28, 2017.</p> <p><u>Hence the apparent contradiction between the two.</u></p> <p><u>The new evidence gathered after July 4, 2017, helps to explain this apparent contradiction.</u></p> <p>First of all, in the absence of information which became available only after July 4, 2017, it is possible that the European Commission did not attribute particular relevance on the content of the ECB's inspection report for at least two reasons: <i>(i)</i> the European Commission may have considered that the considerations in the June 2, 2017 inspection report were superseded by the solvency declaration provided by the ECB on June 28, 2017; and <i>(ii)</i> the ECB had identified the need for "<i>additional provisions</i>" which represented a prudential assessment of further adjustments - not an accounting evaluation of omitted provisions.</p> <p>Indeed, the authorization decision explicitly required MPS "<i>to take into account the quantitative and qualitative requirements of the findings of the on-site inspection performed by the ECB</i>" (DG Comp, Annex 15.108, p. 7).</p> <p>All of this, it should be noted, was always "<u>based on the available information</u>" (European Commission, DG Comp, Annex 15.108, p. 25) as of July 4, 2017.</p> <p>As for the ECB - whose inspection findings, as already noted, were based on a prudential supervision and not accounting driven - it relied on the correctness of MPS's financial statements when it "<i>on 28 June 2017, the ECB sent a letter to the European Commission which stipulated that at 31 March 2017 – on a consolidated level – the Bank had a CET1-ratio of 6,46% and a total capital ratio of 8,89%</i>" (DG Comp, Annex 15.108, p. 6): this is because the ECB transmitted the CET1-Ratio and Total Capital Ratio data to the DG Comp <u>as reported</u></p>
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¹⁰² MPS had incurred a loss of euro 3,241.1 million in 2016 (MPS, Annex 9.18) and a loss of euro 3,242.6 million as of June 30, 2017 (MPS, Annex 9.32)

¹⁰³ euro 749.9 million in the financial statement as of September 30, 2016 (MPS, Annex 10.82) and euro 1.842 billion in the fourth quarter of 2016 (MPS, Annex 10.83).

	<p>by MPS in the financial statement as of March 31, 2017 (MPS, Annex 9.31, pp. 36).</p> <p>That being said, the <u>new information that emerged after July 4, 2017,</u> (see §9 “<i>Information on alleged infringement of other rules of European Union law and on other procedures</i>”, Measure 1, recital 1-11) and <u>the consequent re-reading of the pre-existing documents,</u> including the inspection report dated June 2, 2017 (ECB, Annex 17.1), allows for a coherent reconciliation of the apparent contradiction between, on the one hand, the conclusions of the June 2, 2017, inspection report and, on the other, the DG Comp’s assessment, based on the ECB’s communication of June 28, 2017: <u>the “additional provisions” identified by the ECB from a prudential perspective were, in fact, found to coincide with the unrecorded accounting items, or losses that had already occurred but were hidden by MPS.</u></p> <p>This was something that neither the ECB nor the DG Comp (nor the MEF as an interlocutor of the DG Comp) could have been aware of.</p> <p>Following the ‘moral suasion’ exerted by the ECB (ECB, Annex 18.6), MPS did indeed book the “<i>additional provisions</i>” of “euro 7,55billion” (ECB, 17.1, p. 8) from an accounting perspective (albeit in the financial statements subsequent to the 2015 financial statements¹⁰⁴, referring to them as “<i>non-recurring adjustments</i>”, thus providing further evidence that the “<i>additional provisions</i>” were omitted provisions for accounting purpose.</p> <p>However, this information was not part of the DG Comp’s knowledge base at the time of the approval of the State aid on July 4, 2017, because by that date MPS had only accounted for one third¹⁰⁵ of the omitted provisions as of December 31, 2015.</p> <p><u>In practice, the European Commission, the ECB, and the MEF all acted, each within its own competence, to secure authorization for MPS to receive the 2017 state aid, relying on the correctness of the information ultimately provided by MPS at that time, which, in</u></p>
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¹⁰⁴ 749.9 million euros in the financial statements as of September 30, 2016 (MPS, Annex 10.82) and 1.842 billion euros in the fourth quarter of 2016 (MPS, Annex 10.83), 4 billion euros in the financial statements as of June 30, 2017, approved on August 11, 2017 (MPS, Annex 10.85), and 435 million euros in the financial statements as of December 31, 2017 (MPS, Annex 9.12). The remaining balance (7.550 minus 749.9 minus 1.842 minus 4.000 minus 250 million minus 185 = 523) was not recorded thanks to the AMCO operation.

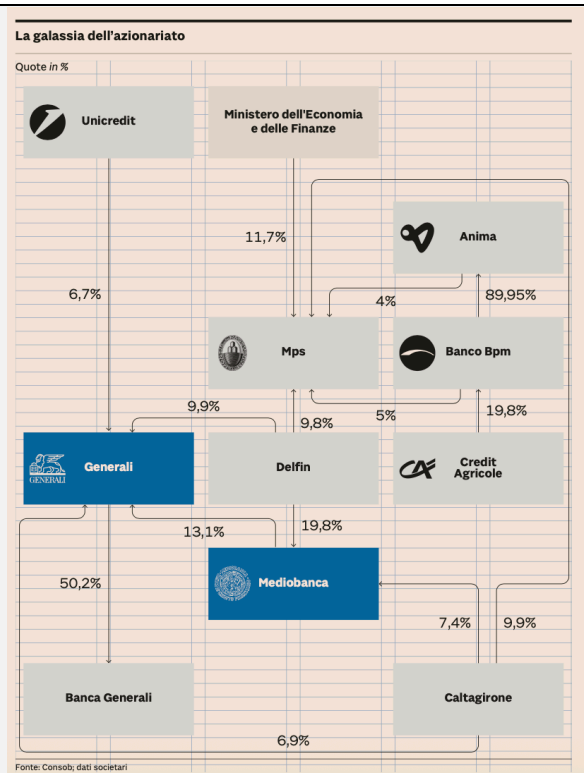
¹⁰⁵ 749.9 million euros in the financial statements as of September 30, 2016 (MPS, Annex 10.82) and 1.842 million euros in the fourth quarter of 2016 (MPS, Annex 10.83), or 2,591.9 million euros, representing 34% of the omitted provisions of 7.550 million euros as of December 31, 2015

	<p><u>light of the new evidence presented in conjunction with the different interpretation of the ECB report dated June 2, 2017, would now be considered incorrect.</u></p> <p>It is worth remembering that “<i>in order to ensure that the State aid rules are applied correctly and effectively, the Commission should have the opportunity of revoking a decision which was based on incorrect information</i>” (Regulation (EU) 2015/1589, (21)).</p> <p style="text-align: center;">*</p> <p>In conclusion, if - based on the information available <u>before July 4, 2017</u>, including the ECB’s inspection report of June2, 2017 - the Directorate-General for Competition (DG Comp) was able to conclude that the State aid granted to MPS in 2017 (<i>Measure 1</i>) was legitimate, and therefore <i>Measure 3</i> was also legitimate, the new information which became available <u>after 4 July 2017</u>, presents an entirely different perspective, from which it becomes clear that <i>Measure 1</i> is incompatible with the exemption set out in Article 32(4)(d) of the BRRD.</p> <p>This conclusion is fully consistent with the findings of the Judge for Preliminary Investigations (Tribunal of Milan), who, on May 24, 2024, ordered a criminal investigation against certain former directors of MPS for the falsification of the 2016 and 2017 financial statements and for allegedly committing fraud against the State in connection with Measure 1.</p> <p>The judge stated that on one hand any form of “<i>complicity or collusion on the part of the ECB, the European Commission, or the Italian Government in the alleged fraud</i>” can be excluded, given that “<i>it was precisely the inspections carried out by the Bank of Italy and the ECB that brought to light a number of critical issues in MPS’s financial statements</i>”; on the other hand, “<i>the hypothesis that false corporate disclosures may have misled the granting authority, thereby enabling the undue receipt of public funding in the absence of the conditions required for its lawful disbursement, cannot be dismissed</i></p>
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	<i>as unfounded” (Tribunal of Milan, Annex 1.104, translation)¹⁰⁶</i>
Measure 1, 2 and 3	<p>The receipt by MPS of euro 7,5 billion in allegedly unlawful State aid has adversely affected the Complainant as an indirect shareholder of Mediobanca through his holding in Bluebell Partners Ltd, also by enabling the hostile takeover bid launched by MPS for Mediobanca (MPS, Annex 10.174).</p> <p>Crucially, the State aid was put into practice through a concerted arrangement between MPS and its two principal shareholders (Delfin, Caltagirone), who jointly acquired shares directly from the State and coordinated their support for the hostile public offer (OPS) against Mediobanca.</p> <p>This was not merely parallel investment behaviour, but a structured mechanism through which public resources were deliberately channelled by MPS to achieve a distortive competitive objective.</p> <p>The concerted structure thus served as a vehicle to amplify the anticompetitive effects of the aid, enabling MPS to undertake an acquisition that would have been unfeasible under normal market conditions.</p> <p>These elements should also be part of DG Comp formal investigation, to assess whether the aid granted to MPS was effectively used to secure control over a competing operator in the internal market.</p> <p>DG Competition should examine not only the legality of the aid measures themselves, but also the specific modalities of their implementation through this coordinated scheme.</p> <p style="text-align: center;">*</p> <p>RELEVANT BACKGROUND</p> <p>1. Delfin (the holding company of the Del Vecchio family) and Caltagirone are long-standing shareholders of Assicurazioni Generali Spa (“Generali”), of which Mediobanca is main shareholder. As of December 31, 2019, the Del Vecchio Group</p>

¹⁰⁶ Original text: “*complicità/connivenza della BCE, della Commissione UE e del Governo italiano nella ipotizzata truffa – atteso che proprio le ispezioni poste in essere dalla Banca d'Italia e dalle BCE hanno consentito l'emersione di una serie di criticità nei bilanci di MPS*” d'altra parte “*non appare peregrino che le false comunicazioni sociali abbiano potuto indurre in errore l'ente erogante, in modo da conseguire indebitamente un finanziamento pubblico, in assenza dei presupposti che lo legittimavano*” (**Tribunal of Milan, Annex 1.104**)

	<p>owned 4,86% of Generali, Caltagirone owned 5%, and Mediobanca owned 13,03% (Generali, Annex 15.241). The stakes of Delfin and Caltagirone have been gradually increased over time: by the date of the Generali shareholders' meeting on April 27, 2025, the two shareholders held 9,9% (Delfin) and 6,8% (Caltagirone), with Mediobanca remaining a stable shareholder at 13,02% (II Sole 24Ore, Annex 14.54). Delfin and Caltagirone are respectively the second and third-largest shareholders of Generali, after Mediobanca, the largest shareholder.</p> <p>2. Delfin became a significant shareholder in Mediobanca in September 2019, initially acquiring a 6,94% stake (II Sole24 Ore, Annex 14.56). Following authorization from the ECB to exceed the 10% threshold, Delfin progressively increased its holding, reaching 19,8% of Mediobanca's share capital at the shareholders' meeting held on October 28, 2024 (Mediobanca, Annex 15.233). Caltagirone became a shareholder of Mediobanca in February 2021, acquiring an initial 1,0% stake (II Sole24Ore, Annex 14.57), which was later increased to 7,6% as of the October 2024 shareholders' meeting (Mediobanca, Annex 15.233). Delfin and Caltagirone are currently the first and second-largest shareholders of Mediobanca, respectively.</p> <p>3. Delfin and Caltagirone became shareholders of MPS on 13 November 2024 (II Sole24Ore, Annex 14.51) through the acquisition, on the same day, of a 3,5% stake each from the Ministry of Economy and Finance ("MEF"). Both parties rapidly and significantly increased their holdings, reaching 9.86% (Delfin) and 9.96% (Caltagirone) of MPS's share capital by the date of the MPS shareholders' meeting in April 2025 (II Sole24Ore, Annex 14.53). As of that date, Caltagirone and Delfin were the first and second largest shareholders of MPS, respectively.</p> <p>4. Below is a summary of the main cross-shareholding arrangements in Mediobanca, Generali, and MPS:</p>
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Source: Sole 24Ore del 29 aprile 2025

5. on September 10, 2021, Delfin (holding a 4,92% stake in Generali) and Caltagirone (holding a 6% stake) entered into a shareholders' agreement committing to consult with each other on the matters included in the agenda of the Generali Shareholders' Meeting scheduled for 29 April 2022, which included the appointment of a new Board of Directors. The agreement expired at the conclusion of the April 2022 meeting and was not renewed (**Delfin-Caltagirone, Annex 15.226**).
6. on April 29, 2022, ahead of the Generali Shareholders' Meeting convened to appoint a new Board of Directors, Caltagirone (then holding 6,5% of the share capital) submitted a slate of candidates aimed at securing a majority on the Board, including nominees for the positions of Chairman and Chief Executive Officer (**Caltagirone, Annex 15.227**). This slate was submitted in opposition to the majority list presented by the outgoing Board of Generali (**Generali, Annex 15.242**), which was supported by

	<p>Mediobanca (Generali, Annex 15.228). Caltagirone's slate, which received minority support, resulted in the election of only three board members, with Delfin (then holding 9,8%) voting in favour (Generali, Annexes 15.229 and 15.228).</p> <p>7. on October 28, 2023, in view of the Mediobanca Shareholders' Meeting, Delfin (holding 19,74%) submitted a minority slate of five candidates for the Board of Directors (Delfin, Annex 15.230). Three candidates from Delfin's slate were elected, with the support of Caltagirone (holding 9,98%) (Mediobanca, Annexes 15.231, 15.232).</p> <p>8. on October 28, 2024, at the Mediobanca Shareholders' Meeting, neither Delfin (19.81%) nor Caltagirone (7.76%) participated (Mediobanca, Annexes 15.233; Milano Finanza, 14.49; La Repubblica, Annex 14.50). This absence is highly unusual given the significant stakes held by both shareholders. As reported by La Repubblica: "<i>Caltagirone and Delfin snub the Mediobanca shareholders' meeting... The two private investors, who together hold nearly 30% and are in open conflict with management over Generali's governance, did not attend</i>" (La Repubblica, Annex 14.55, translation).</p> <p>9. on November 13, 2024, the Ministry of Economy and Finance (MEF) carried out an Accelerated Block Building (ABB) transaction to place a 15% stake in MPS (MEF, Annex 15.234), which was acquired by four investors: Delfin (3,5%), Caltagirone (3,5%), BPM (5%), and Anima (3%) (Il Sole24Ore, Annex 14.51). According to the CONSOB disclosure on significant holdings in MPS dated 20 November 2024 - and likely reflecting rounding (Caltagirone) or pre-existing shares (Anima) - the resulting stakes were: Delfin (3,5%), Caltagirone (3,6%), BPM (5%), and Anima (4%), with the MEF retaining a residual 11,73% stake (CONSOB, Annex 5.17).</p>
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	<p>10. on December 18, 2024, MPS announced the resignation of five board members (MPS, Annex 10.175), all of whom had been appointed by the MEF - which at the time held a 64,23% stake - at the MPS Shareholders' Meeting of April 2023 (MPS, Annex 15.235).</p> <p>11. on December 27, 2024, MPS announced the co-optation of five new directors (MPS, Annex 10.176) to replace those who had resigned on 18 December. Two directors were designated by Caltagirone, one by Delfin, and two by Anima (Corriere della Sera, Annex 14.52). The resulting composition of the MPS Board of Directors was: seven directors designated by the MEF, two by Caltagirone, two by Anima, one by Delfin, and three appointed by institutional investors (Assogestioni).</p> <p>12. on January 23, 2025, the Board of Directors of MPS, with the decisive votes of the seven directors appointed by the MEF and the five directors appointed by the four entities to which the MEF had transferred a 15% stake in the company on 13 November 2024, approved a Public Exchange Offer (PEO) for the 100% of Mediobanca's capital (MPS, Annex 10.174), an unsolicited offer (Annex 15.203).</p> <p>13. on November 13, 2024 to 27 April 2024, between the date of the first 3,5% stake acquisition (13 November 2024) and the MPS Shareholders' Meeting (27 April 2024), Delfin and Caltagirone acquired additional MPS shares on the market. As a result, they presented their stakes at the MPS Shareholders' Meeting with respective holdings of 9,96% (Caltagirone) and 9,86% (Delfin) (Il Sole 24 Ore, Annex 14.53), becoming the first and second largest shareholders.</p> <p>14. on April 17, 2025, the MPS Shareholders' Meeting approved the capital increase reserved for the Exchange Offer on Mediobanca (OPS) placed on the agenda (MPS, Annex 10.177). The approval of this transaction was made possible by the votes in favor from the</p>
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	<p>MEF (11,73%), Caltagirone (9,96%), Delfin (9,86%), BPM (5%), and Anima (4%), collectively holding 40,5% of the share capital (and 55% of the votes represented at the meeting, with a capital representation of 73,6%). Without the votes in favour of the MEF, Delfin, Caltagirone, BPM, and Anima, the transaction would not have been approved as it would not have reached the required two-thirds majority (II Sole24OreAnnex 14.53).</p> <p>15. the concerted action between Delfin, Caltagirone, and MPS is an established fact, widely acknowledged and undisputed, as recognized by the financial press (with no known request for a denial from the parties involved). As reported: <i>“The Roman group and the holding company of the Del Vecchio family are advancing with their project, which includes a public exchange offer from Monte dei Paschi to Mediobanca, where they hold significant positions: the first with 8% of Piazzetta Cuccia, the second with nearly 20%”</i> (Corriere della Sera, Annex 10.180, translation). Additionally, <i>“the strong shareholders Delfin and Caltagirone had moved through MPS to gain control of Mediobanca, and they were already tasting victory over the 13% of Generali. This stake could have been combined with the other 25% obtained in last Thursday’s meeting [i.e., the 24 April 2025 Generali Shareholders’ Meeting] to achieve a new change in the Board of Directors”</i> (La Repubblica, Annex 10.182, translation).</p> <p>The sequence of events outlined appears to indicate a concerted action between the involved parties (MPS, Caltagirone, Delfin), through which Delfin and Caltagirone enable MPS to acquire Mediobanca, while MPS ensures Delfin and Caltagirone control over Generali.</p> <p style="text-align: center;">*</p> <p>CONCERTED PRACTICES FOR THE MISUSE OF UNLAWFUL STATE AID</p> <p>Under Italian law, the term <i>“persons acting in concert”</i> refers to <i>“multiple persons, who, on the basis of agreements however finalized,</i></p>
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	<p><i>even though invalid or ineffective, intend to exercise in concert the related rights, where such shares, considered cumulatively, reach or exceed the thresholds indicated in article 15 or result in the possibility of control or significant influence”</i> (Legislative decree no. 58 of February 24, 1998 – Consolidated Law on Finance pursuant to Articles 8 and 21 of Law no. 52 of February 6, 1996, Art. 15-bis).</p> <p>The European Banking Authority (EBA), the highest supervisory authority in the European Union - tasked, inter alia, with drafting binding technical standards to harmonize banking supervision across EU Member States - issued guidelines on December 20, 2016, effective from October 10, 2017 (<i>“Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector”</i>, EBA, Annex 7.20).</p> <p>These guidelines further clarified that <i>“should consider as acting in concert any legal or natural persons who decide to acquire or increase a qualifying holding in accordance with an explicit or implicit agreement between them”</i> (EBA, Annex 7.2),</p> <p>With this, the EBA made it clear that an <i>“explicit”</i> agreement - whether written or oral, but in any case, openly declared between the parties—is not even necessary. It is sufficient for there to be an <i>“implicit”</i> agreement, i.e., one not overtly stated, but which can be inferred from the actual and consistent conduct of the parties involved.</p> <p>In practice, this refers to de facto cooperation, even tacit, which demonstrates a common intention, despite the absence of any contract, formal document, or verbal understanding. A concerted action exists where the parties act in a coordinated and systematic manner in the exercise of voting rights, where a recurring pattern reveals a substantive understanding, and where objective elements indicate the presence of a common strategy.</p> <p>Even under the most favourable interpretation - namely, the one that denies the existence of any agreement, even an informal or tacit understanding between Delfin and Caltagirone - the EBA has clarified that the defining element of concerted action does not lie in the agreement itself, but in the actual conduct of the parties.</p> <p>What matters from a regulatory perspective is the coordinated behaviour aimed at pursuing a common goal, since it is the conduct that produces</p>
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	<p>the legal and substantive effects of the parties' understanding. In the logical chain of intent–agreement - conduct, the agreement plays an ancillary and non-determinative role, whereas the conduct serves as the objective manifestation of intent.</p> <p>As a result, the detrimental effects on the market and on the transparency of corporate holdings stem from the conduct, regardless of formal proof of an agreement.</p> <p>In other words, the EBA has definitively clarified that even in the absence of formal evidence of an explicit agreement - or even in the complete absence of such an “<i>explicit</i>” agreement, whether concealed or undisclosed - the mere existence of coordinated and joint conduct is sufficient to establish concerted action, as it constitutes an “implicit” agreement.</p> <p>In 2017, the EBA Guidelines (EBA, Annex 7.20) were adopted by the ECB, which serves as the supervisory authority for both Mediobanca and MPS: “<i>The ECB’s compliance with the EBA Guidelines should be considered as operating within the limit of, and without prejudice to, national provisions transposing Directive 2013/36/EU. (for EBA)</i>” (Joint Guidelines - Compliance Table, JC/GL/2016/72 Appendix 1, EBA, Annex 7.21).</p> <p>Also in 2017, the Bank of Italy stated that it had not formally transposed the guidelines but that it “<i>intends to comply</i>”, specifying the narrow scope (not relevant here, as it has already been fully addressed by existing legislation - see below) of the parts of the EBA Guidelines not yet transposed: “[<i>Italy</i>] <i>does not comply but intends to comply with the parts of the Joint Guidelines not already fully addressed at the national level, by such time as the necessary legislative or regulatory proceedings have been completed. Please note that for what relates to the calculation of the indirect acquisitions of qualifying holdings under Section 6 of the Joint Guidelines, the Italian Consolidated Banking Law (Italian legislative decree no. 385/1993 and subsequent amendments) at present provides only for the ‘control criterion’; therefore, the possible amendment to the Consolidated Banking Law does not depend on the Bank of Italy and is subject to the ordinary legislative proceeding</i>” (Joint Guidelines - Compliance Table, JC/GL/2016/72 Appendix 1, EBA, Annex 7.21).</p>
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	<p>Indeed, for the purposes relevant here, the EBA’s clarification- that even an “<i>implicit</i>” agreement constitutes concerted action - has already been fully transposed into the Italian legal system, which refers to agreements concluded “agreements however finalized” even “<i>if invalid or ineffective.</i>”</p> <p>The expression “<i>agreements however finalized</i>” is all-encompassing, and necessarily includes any kind of agreement, written or unwritten, “<i>explicit</i>” or “<i>implicit</i>”, as clarified by the EBA for the purpose of harmonizing standards across the European Union.</p> <p>It follows that, in assessing whether concerted action exists, what matters is not so much the direct proof of an agreement- such as notes, private writings, meetings, emails, phone calls, or even overlapping mobile phone data between the alleged concert parties- elements that may not exist at all in the case of an “<i>implicit</i>” agreement.</p>
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10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

Supporting evidence:	
Annex 1.63	- Tribunal of Milan - Request for Referral to Trial Profumo and Viola for Deteriorated Credit Procedure (December 14, 2022)

Annex 1.104	- Tribunal of Milan - Order for Coercive Referral to Trial and First Order for Coercive Investigations on 2017 State aid to MPS (May 28, 2024)
Annex 1.109	- Tribunal of Milan - Second Order for Coercive Investigations on 2017 State aid to MPS (July 16, 2024)
Annex 5.11	- Consob - Resolution on the suspension of MPS listing (December 23, 2016)
Annex 5.17	- CONSOB – Relevant shareholders of MPS (November 20, 2024)
Annex 6.13	- Bank of Italy - Hearing on the Decree Law of December 23, 2016, No. 237 (January 17, 2017)
Annex 6.19	- Bank of Italy Press Release (June 25, 2017)
Annex 7.11	- ECB - Response to the European Parliament's Inquiry on 2017 State aid to MPS (August 6, 2019)
Annex 7.12	- EBA, Stress Test Results (July 29, 2016)
Annex 7.19	- Exchange of Comments MPS-ECB on OSI 2016 1638 (April 7, 2017)
Annex 7.29	- EBA - Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector effective October 1, 2017 (December 20, 2016)
Annex 7.21	- EBA - Joint Guidelines - Compliance Table JC GL 2017 17 (2017)
Annex 7.22	- ECB Press Release (23 June 2017)
Annex 8.44	- Independent witness expert opinion Chiaruttini-Minetto, appointed by the Italian Judicial Authorities (May 6, 2022)
Annex 9.5	- MPS Offering - Circular Rights Offering 2014
Annex 9.6	- MPS Offering - Circular Rights Offering 2015
Annex 9.12	- MPS Financial Statement 2017
Annex 9.18	- MPS Financial Statement 2016
Annex 9.31	- MPS Financial Statement as of March 31, 2017
Annex 9.32	- MPS Financial Statement as of June 30, 2017
Annex 9.33	- MPS Financial Statement as of September 30, 2017
Annex 9.37	- MPS Financial Statement as of June 30, 2020
Annex 9.38	- MPS Results as of September 30, 2020 (November 13, 2020)
Annex 9.39	- MPS Financial Statement 2020
Annex 9.51	- MPS Upper Tier 2 Exchange Offering Prospectus (October 5, 2017)
Annex 9.52	- MPS Offering Circular Rights Offering 2022 (October 13, 2022)

Annex 9.53	- MPS Financial Statements as of June 30, 2022
Annex 9.54	- MPS Financial Statements 2021
Annex 9.55	- MPS Financial Statement 2022
Annex 9.56	- MPS Financial Statement as of December 31, 2024 (to be approved by AGM)
Annex 10.54	- MPS, Press Release (December 26, 2016)
Annex 10.57	- MPS, Press Release (July 29, 2016)
Annex 10.60	- MPS - Report on Item 1 of the Agenda of the Extraordinary General Meeting (December 18, 2017)
Annex 10.82	- MPS, Press Release Third Quarter 2016 Results (October 25, 2016)
Annex 10.83	- MPS, Press Release Fourth Quarter 2016 Results (February 9, 2017)
Annex 10.85	- MPS, Press Release Second Quarter 2017 Results (August 11, 2017)
Annex 10.89	- MPS, Press Release, EBA Stress Test (July 29, 2016)
Annex 10.90	- MPS, Press Release (March 25, 2026)
Annex 10.92	- MPS, Press Releases (November 24, 2016)
Annex 10.94	- MPS, Press Releases (December 22, 2016)
Annex 10.95	- MPS, Press Releases (August 10, 2017)
Annex 10.100	- MPS, Press Releases (December 26, 2016)
Annex 10.145	- MPS, Press Releases (December 26, 2016)
Annex 10.148	- MPS Press Release (November 23, 2017)
Annex 10.149	- MPS Press Release (June 29, 2020)
Annex 10.150	- MPS Press Release (November 24, 2020)
Annex 10.151	- MPS Spin-off Project in favour of AMCO
Annex 10.152	- MPS - Board of Directors Report for AMCO Transaction (October 4, 2020)
Annex 10.154	- MPS Press Release (December 22, 2017)
Annex 10.155	- MPS Press Release (December 17, 2020)
Annex 10.156	- MPS Press Release (December 1, 2020)
Annex 10.157	- MPS BoD Report for AGM September 15, 2022 (August 12, 2022)
Annex 10.158	- MPS Press Release (September 5, 2022)
Annex 10.159	- MPS Press Release (January 28, 2021)
Annex 10.160	- MPS Press Release (November 4, 2022)
Annex 10.161	- MPS Press Release (October 13, 2022)

Annex 10.162	- MPS Press Release (June 6, 2014)
Annex 10.163	- MPS Press Release (May 21, 2015)
Annex 10.164	- MPS Press Release (October 14, 2022)
Annex 10.165	- MPS Press Release (June 23, 2022)
Annex 10.166	- MPS Option Rights (ISIN IT0005509002)
Annex 10.167	- MPS Unexercised Rights (ISIN IT0005509010)
Annex 10.168	- MPS Subordinated Debt 5.375% Due January 18, 2028
Annex 10.169	- MPS Subordinated Debt 8.0% Due January 22, 2030
Annex 10.170	- MPS Subordinated Debt 8.5% Due September 10, 2030
Annex 10.171	- MPS Subordinated Debt 10.5% Due July 23, 2029
Annex 10.172	- MPS Press Release (August 5, 2022)
Annex 10.173	- MPS Press Release (November 4, 2022)
Annex 10.174	- MPS Press Release (January 24, 2025)
Annex 10.175	- MPS, Press Release (December 18, 2024)
Annex 10.176	- MPS, Press Release (December 27, 2024)
Annex 10.177	- MPS, Notice Shareholders Meeting (April 17, 2025)
Annex 10.178	- MPS Board Resolution for the pricing of the 2022 Rights Offer (October 14, 2022)
Annex 10.179	- MPS Press Release (September 22, 2022)
Annex 10.180	- Corriere della Sera (April 29, 2025)
Annex 10.181	- MPS, Presentation (May 5, 2025)
Annex 14.46	- ANSA (November 13, 2020)
Annex 14.53	- Il Sole24Ore (April 17, 2024)
Annex 14.54	- Il Sole24Ore (April 24, 2024)
Annex 14.49	- Milano Finanza (October 28, 2024)
Annex 14.50	- La Repubblica (October 28, 2024)
Annex 14.51	- Il Sole24Ore (November 13, 2024)
Annex 14.52	- Il Corriere della Sera (December 27, 2024)
Annex 14.55	- La Repubblica (October 28, 2024)
Annex 15.16	- European Commission Decision C(2013) 8427 final (November 27, 2013)
Annex 15.108	- European Commission - Decision C(2017) 4690 (July 4, 2017)
Annex 15.109	- MPS Capitalization Decree (July 27, 2017)

Annex 15.111	- European Parliament - Inquiry to the ECB on State aid to MPS (July 12, 2019)
Annex 15.180	- Law Decree December 23, 2016, No. 237
Annex 15.181	- Conversion into Law with modifications of Decree Law December 23, 2016, No. 237
Annex 15.203	- Mediobanca, Press Release (January 28, 2025)
Annex 15.212	- European Commission - Decision C(2022) 5536 final (August 2, 2022)
Annex 15.215	- Decree of the President of the Council (October 16, 2020)
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Annex 15.216	- Parliamentary Hearing of Italian Minister of Finance (March 28, 2022)
Annex 15.217	- AMCO Press Release (March 8, 2022)
Annex 15.218	- European Commission - Decision C(2019) 6525 final (September 2, 2019)
Annex 15.219	- European Commission Press Release (August 2, 2022)
Annex 15.221	- European Commission EC Decision(2016) 9032 (December 29, 2016)
Annex 15.226	- Excerpt from the Delfin-Caltagirone Shareholders' Agreement (September 10, 2021)
Annex 15.227	- Caltagirone's Board List Submission for the Generali Board of Directors (March 28, 2022)
Annex 15.228	- Minutes of the Generali Annual General Meeting (April 29, 2022)
Annex 15.229	- Generali Press Release (April 29, 2022)
Annex 15.230	- Delfin's List for the Mediobanca Shareholders' Meeting (October 28, 2023)
Annex 15.231	- Minutes of the Mediobanca Shareholders' Meeting 2023 (Annex F)
Annex 15.232	- Mediobanca Press Release (October 28, 2025)
Annex 15.233	- Mediobanca, Minutes of Shareholders 'Meeting (October 28 2024)
Annex 15.234	- MEF Press Release (November 13, 2024)
Annex 15.235	- MEF List for MPS Shareholders' Meeting 2023 (April 20, 2023)
Annex 15.236	- Caltagirone List for Generali Shareholders' Meeting (April 24, 2025)

Annex 15.237	- Mediobanca List for Generali Shareholders' Meeting (April 24, 2025)
Annex 15.238	- Generali Press Release (April 24, 2025)
Annex 15.239	- Generali, Shareholders' Meeting - Summary Report of Voting Results (April 14, 2025)
Annex 15.240	- Generali Shareholders' Meeting 20 – List Presented by the Board of Directors (14 March 2022)
Annex 15.241	- Generali Annual Report 2019
Annex 15.242	- List Presented by the Board of Directors of Generali for the Generali Shareholders' Meeting 2022 (February 25, 2022)
Annex 17.1	- ECB Inspection Report OSI-2016-1-ITMPS-1238 (June 2, 2017)
Annex 18.6	- ECB Letter Draft with Translation and Certification (June 23, 2016)
Annex 18.8	- ECB Letter August 6, 2019, with Translation and Certification (August 6, 2019)
Annex 19.26	- Independent witness expert opinion Bellavia-Ferradini appointed by the Italian Judicial Authorities (April 26, 2021)
Annex 23.1	- Communication from G. Bivona to the European Commission (9 June 2019)
Annex 23.2	- Response from the European Commission to G. Bivona (27 June 2019)
Annex 23.3	- Communication from G. Bivona to the European Commission (2 July 2019)
Annex 23.4	- Response from the European Commission to G. Bivona (23 July 2019)
Annex 23.5	- Communication from G. Bivona to the European Commission (25 July 2019)
Annex 23.6	- Response from the European Commission to G. Bivona (21 August 2019)
Annex 23.7	- Communication from G. Bivona to the European Commission (2 January 2020)
Annex 23.8	- Response from the European Commission to G. Bivona (19 February 2020)
Annex 23.9	- Communication from G. Bivona to the European Commission (13 December 2021)

Annex 23.10	- Response from the European Commission to G. Bivona (13 January 2022)
Annex 23.11	- Communication from G. Bivona to the European Commission (16 January 2022)
Annex 23.12	- Response from the European Commission to G. Bivona (3 February 2022)
Annex 23.13	- Communication from G. Bivona to the European Commission (29 May 2022)
Annex 23.14	- Communication from G. Bivona to the European Commission (13 September 2022)
Annex 23.15	- Communication from G. Bivona to the European Commission (18 September 2022)
Annex 23.16	- Communication from G. Bivona to the European Commission (13 November 2022)
Annex 23.17	- Response from the European Commission to G. Bivona (7 November 2022)
Annex 23.18	- Communication from G. Bivona to the European Commission (16 November 2022)
Annex 23.19	- Communication from G. Bivona to the European Commission (12 January 2025)
Annex 23.20	- Communication from the European Commission to G. Bivona (21, 23 e 24 January 2025)
Annex 23.21	- Communication from G. Bivona to the European Commission (2 February 2025)
Annex 23.22	- Response from the European Commission to G. Bivona (7 February 2025)

Considering the facts presented and duly documented, I respectfully request that DG Comp (i) take the necessary steps to interrupt the limitation period, (ii) open a formal investigation into *Measures 1, 2, and 3* and, (iii) refrain from authorizing the MPS-Mediobanca transaction under its merger control responsibility until the investigation (ii) is closed.

I hereby declare that all the information in this form and annexes is provided in good faith.


Giuseppe Bivona

Rome, 12 June 2025

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