



## TOPICS COVERED

- DOTS FROM EUROPE
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  - Non performing loans: Italy reaches an agreement with the UE



In this edition of Legal Pulse, we consider recent developments in the Italian and UE regulatory environment analyzing the investments opportunities. We invite you to read about these legal updates regarding Italy and welcome your thoughts on areas to be covered in future issues.

## Dots for Growth

*“Reforming a country is difficult, even more so during a deep recession. Italians have endured the harsh financial cost of adjustment and at the same time are supporting the structural reforms that will confirm Italy as one of the leaders of the developed world.”* Pier Carlo Padoan, Minister of Economy and Finance, Italy

### Investment opportunities

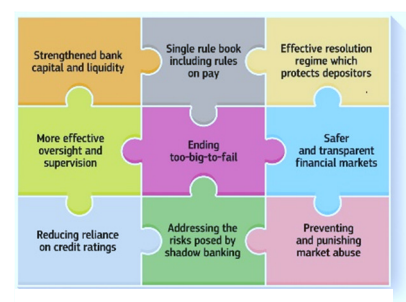
A process is currently under way to accelerate the realization of investments, overcoming the choke points that often block public works and investments in Italy. Vehicles to attract long-term investors in the field of energy, infrastructures and IT are currently being developed by means of:

1. **UE dots:** the Action Plan for the capital markets Union launched on last September 2015 together with the European Fund for Strategic Investments (the so-called Juncker plan);
2. **Italian dots:** whistleblowing: another step forward to an effective anti-corruption framework and EU-Italy agreement on non performing loans.

### Dots from Europe:

#### Capital Markets Union project<sup>1</sup>

The Commission issued the proposal for the prospectus regulation on 30 November 2015 as part of the legislative proposals



Source: UE - Key pieces of the EU wide financial reform puzzle

aimed at creating a capital markets union. On January 2016, the draft prospectus went under discussion on Council's Financial Services Working Party. The document lays on the following principles:

1. Exemption for entrepreneurs from having to

<sup>1</sup> Capital Markets Action Plan can be accessed through: [http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan\\_en.pdf](http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf)

prepare a prospectus if the value of the securities they issue is below €500,000 allowing member states to set a higher threshold - up to €10 million - for their domestic markets.

2. Creating a lighter prospectus for smaller companies simplifying also secondary issuances for such companies already listed.

The aim of the above described measures is to make easier and cheaper for SMEs raising alternative funds in the EU instead of relying only on bank funding.

Since the availability of alternatives to bank finance can become viable whereas investors are provided with a minimum level of information on the company and its business before making their investment decision, the proposal for prospectus regulation provides for a Single access point for all EU prospectuses that will be made available (for free) by the European Securities and Markets Authority (ESMA)<sup>2</sup>.

## European Fund for Strategic Investments (Efsi)

The Investment Plan for Europe or Juncker Plan approved by the European Commission by means of Regulation (EU) 2015/1017 aims at reviving investment in strategic projects around Europe by mobilizing 315 billion euro for the period 2015-2017.

### a) The Plan – the mechanism

The mechanism of plan is synthetized as “one euro goes in, 15 come out”. The 21€billion initial dotation of the found will unlock billions of private investors’ money so to generate €240 billion for

long-term investments and €75 billion for SMEs and mid-cap firms over the period 2015-2017.

In fact, the EFSI serves as credit protection for a range of new activities being carried by the European Investment Bank (EIB).

On January 31, the EU Commission published a document showing the state of play as of January 2016. According to such publication, the Commission has launched a portal (<http://ec.europa.eu/eipp>) that has gone live in February 2016, where project promoters can submit their projects. Together with this EIB has also launched an advisory portal that will enhance the capacity of public and private players across the EU to structure their projects in order to bring them to maturity.

The EFSI projects need to be economically and technically viable, consistent with Union policies, provide additionality (i.e. they could not be realized without the backing of the EU guarantee), and maximise the mobilisation of private sector capital according with the graphic hereinbelow showing the project cycle of a project financed through EFSI.<sup>3</sup>



<sup>2</sup> Source: <http://www.consilium.europa.eu/en/policies/capital-markets-union/prospectus/>

<sup>3</sup> Source: [https://ec.europa.eu/priorities/sites/beta-political/files/ip-eu-state-of-play-jan-2016\\_en.pdf](https://ec.europa.eu/priorities/sites/beta-political/files/ip-eu-state-of-play-jan-2016_en.pdf)

### b) The Italian side of the Plan – the CDP role

The above measures have been implemented in Italy by means of art 1 paragraph 826 of the Law No. 208 of 28 December 2015 (the Stability Law for 2016) which has appointed the Italy state-backed lender Cassa Depositi e Prestiti (CDP) in a role of “promotional bank”.

CDP has committed to invest 8€ billion in the Plan by means of assigning to worthy Italian projects the guarantees of the Juncker Plan alongside the EIB through investments platforms (SPVs, co-finance agreements or state-guaranteed). On 15 January 2016 the EU Commission<sup>4</sup> data showed that Italy already invested in infrastructures and innovation projects (7 projects amounting to €1,3 billion by means of EIB financings –full list is available on: <http://www.eib.org/efsi/project-list/index.htm#projects>) and financings to SMEs (€189mio by means of finance agreements with several Italian intermediaries).

### Whistle Blowing – another step forward to an effective anti-corruption framework

The risk of corruption is significantly higher on environment where reporting wrongdoing is not supported or protected. For this reason on 21 January 2016 last the Italian Parliament approved the bill n. 3365 introducing for the first time in the Italian legislation rules for the protection of such employees reporting illegal or dangerous facts that they are aware of through their work (the so-called whistleblowers).



The bill still needs the formal approval of the Italian Parliament before it becomes law.

The 2 article bill, in its first one introduces a change in article 54-bis of Legislative Decree 165/2001 (employment by public authorities Act) and applies to employees of public entities.

Article 2 instead rules the protection awarded to employees of private companies by way of introducing some changes in the Legislative Decree 231/2001 (providing for a direct liability of legal entities, companies and associations for certain crimes committed by their representatives) (Decree 231). The new bill reforms article 6 of Decree 231 (article 6 currently provides specific exemptions from liability if the company can demonstrate that, before the crime was committed, it adopted and effectively implemented a model of organization (the so-called 231 Organisational Model)). The newly modified article 6 puts in place a new structure for the voicing of concerns and for protecting whistleblowers of such companies that have adopted the 231

Organisational Model by obliging to the Company to adopt within their model the following principles:

a) Obligation on top managers or on persons that

are supervised by them as well as on individuals that for any reason collaborate with the company, to report, in good faith such facts that (i) they deem highly probable to have occurred; (ii) violate principles contained in the Decree 231 or those contained in the organizational model

<sup>4</sup> Source: [http://ec.europa.eu/priorities/sites/beta-political/files/ip-italy\\_en\\_0.pdf](http://ec.europa.eu/priorities/sites/beta-political/files/ip-italy_en_0.pdf)

- adopted by the company; and (iii) they are aware of through their work;
- b) The adoption of alternative channels able to guarantee the privacy and the identity of the whistle blower also following the raising of concern;
  - c) Refrain from adopting retaliation or other discriminatory measures against the whistleblower enforcing fair treatment after a disclosure has been made (save the right of defense in cases involving liability for slander or defamation); and
  - d) Sanctions for violation of privacy or other discriminatory measures against the whistle blower.

### Non performing loans: Italy reaches an agreement with the UE

As of 1 January 2016 Italy applies the single rulebook for the resolution of banks and large investment firms crisis, as prescribed by the Bank Recovery and Resolution Directive (2014/59/EU). The new rules provide for the use of the bail-in system according to which bank losses will be born according to a pre-defined hierarchy, in first instance by shareholders, secondly by bond holders and finally by unsecured depositors (for deposits over €100,000). This tool has had the consequence that Italian bank bonds have become highly risky instruments. This fact has also worsened the fact that Italian banks are struggling with a high rate of non performing loans.

The *Italian* project to create a *bad debt* has been blocked for months by the EU Commission that

wanted to make sure that the *new* mechanism did not distort competition as well as state aid rules.

Finally on 27 January 2016 Italy and the European Union reached an agreement to help Italian banks sell bad loans. The Italian Banks will be transferring their bad loans to a special purpose vehicle (run by international operators specialized in debt recovery) that will securitize such non performing loans also through the support of a state guarantee.

Such guarantees may be requested by banks that sell their non-performing loans, against regular payment of a fee to the Treasury, calculated as a yearly percentage of the amount guaranteed.

Terms agreed with the UE provide that the pricing of the State guarantee will be on “market terms” in order to ensure the aid-free nature of the scheme.

According to the above said principles on 28 January 2016 the Ministry of Economy and Finance issued a note<sup>5</sup> regarding the “Guarantee on Securitization of NPL”: able to help to calculate the price of such guarantee. According to such note, the price shall be calculated on the basis of single name CDS related to Italian issuers with a risk level equal to that of the guaranteed securities.

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<sup>5</sup>Source: [http://www.dt.tesoro.it/en/news/news\\_gacs.html](http://www.dt.tesoro.it/en/news/news_gacs.html)

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