



THE RECOVERY NEEDS THE CAPITAL MARKET. PUBLIC CONSULTATION ON THE MEF GREEN PAPER CLOSED

by Martino Liva

On 2 March 2022, immediately following the online presentation seminar, the [Green Paper](#) prepared by the Italian Ministry of Economy and Finance (MEF), in conjunction with Consob and the Bank of Italy was published, titled *The competitiveness of Italian financial markets in support of growth* [*La competitività dei mercati finanziari italiani a supporto della crescita*]. A public consultation phase was then opened, in respect of which the MEF announced [the outcomes](#) on 1 July 2022.

The purpose of the Green Paper

The objective of the Green Paper is clear, right from its onset: to encourage “a structural ‘change of pace’ in the relationship between companies and the capital market”. Indeed, the country’s growth, its citizens’ enhanced financial awareness, and the development of Italian companies, both in terms of economic growth and corporate governance best practices, also depend on this approach.

The analysis, in keeping with the more substantial report of the OECD [Capital Market Review Italy 2020](#) report, clearly reveals a trend that is already widely known: the European Union struggles to raise capital through listings and, within the old continent, Italy is certainly not one of its leaders. The number of companies listed in Milan (407 at the end of 2021) is lower than in London, Paris and Frankfurt. Higher than in Amsterdam, where, however, there were 24 IPOs in 2021, compared to 5 in Milan, in addition to 4 transfers from Euronext Growth Milan (formerly AIM Italy) to the main exchange, Euronext Milan (MTA).

The Technical Annexes. Particularly, Annex A

Nonetheless the heart of the MEF Green Paper, following the system analysis, are the “technical annexes”, which are the real subject of the public consultation. It contends that regulatory frameworks are to be reviewed and processes to be simplified. Probably the most relevant, but certainly the one which was the most debated during the public consultation process (19 out of 22 contributions) is Annex A titled *“Improving the listing process in Italy and making it more efficient to enter and remain in markets, particularly by SMEs”* [Migliorare il processo di listing in Italia e rendere più efficiente l’accesso e la permanenza nei mercati, in particolare da parte delle PMI]. An annex which, first and foremost, analyses the longstanding issue of the listing prospectus: simplifying Italian Legislative Decree no. 17/2021, in implementation of the Prospectus Regulation, is not enough, but according to the MEF and many of the consultation participants, there is a need for even more decisive action. For example, setting a maximum number of pages or enabling the document to be drafted in English, thereby only requiring an extract to be prepared in Italian.

The other Annexes address improving the efficiency conditions for investors (especially institutional investors) to participate in the markets, as well as the two issues of enhancing digitalisation for market access and revising the liability regime for supervisory authorities. The latter is an issue that is also receiving attention from the European Commission, which has launched a consultation on a specific document named *“Listing Act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs”*.

Some company law proposals

A notable point of interest is the section in Annex A of the Green Paper that deals with potential company law innovations for listed companies.

A number of proposals for reform are put forward, some of which are more system-based, while others are operative, that are designed to facilitate the raising of capital and to remove barriers to decisions on admission to listing.

Some examples? These are the most relevant.

- 1) Ensuring that the provision introduced with the emergency laws (Italian Decree-Law 76/2020 known as the “Simplification Decree”), which enabled the limit for the exclusion of option rights to be raised up to 20% of the share capital, could become standard, with the option for the shareholders' meeting to approve such exclusion even without the need for a specific provision in the articles of association and with a “favourable” quorum (*i.e.* a quorum for resolutions of the majority of the capital represented at the shareholders’ meeting, a quorum constituting at least half of the share capital).
- 2) Giving more impetus to the increased voting system, despite the fact that the regulations on so-called loyalty shares have been well-adopted (approximately 1/3 of Italian listed companies permit them). Indeed, increased voting (maximum 2 votes per share after a certain period of ownership) was rarely accompanied by multiple voting (maximum 3 votes per share, which was only allowed pre-listing but could be maintained post-listing). According to the Green Paper, these are still low multipliers, which should be strengthened *“at least as regards the current provisions on multiple voting in favour of companies that may be listed in the future”*. This opinion was shared by many of the consultation participants, who focused their efforts on the multiple voting mechanism, which, according to some, should also be

extended to start-ups (even if they are some time away from listing), and which could possibly be mitigated by setting maximum time limits (*e.g.* a five-year sunset period at the end of which the multiplier is extinguished). Without forgetting that there are also some concerns (put forward by [Assogestioni's contribution](#)) regarding the over-crystallisation of control to the detriment of minorities and general contestability, a circumstance that sometimes alarms institutional investors.

- 3) Providing for the reduction of Consob's discretion (Articles 108 and 112 of the Italian Consolidated Law on Finance - TUF) regarding the raising of the threshold (90%) which, if exceeded, triggers the obligation to purchase the remaining securities admitted to trading (unless a sufficient free float is restored within ninety days so as to ensure the normal course of trading). While it is true that flat and abstract thresholds can paradoxically create inefficiencies if not mitigated by assessing the individual case (the reality is in fact complex and varied), at the same time, investors seek legal and regulatory certainty, harmonisation of European regulations and, above all, the assurance of a fixed minimum free float requirement.
- 4) Lastly, as [Borsa Italiana's contribution](#) strongly argues, the opportunity to grant SMEs and start-ups incorporated as limited liability companies (S.r.l.s) to adhere, on a voluntary basis, to the dematerialisation and centralised management regime (Article 83-*bis* TUF). In fact, the quotas of S.r.l.s, which already benefit from the exemptions granted by Article 26 of Italian Decree-Law 179/2012, including the possibility of being issued according to "classes of quotas", with some meeting the three characteristics necessary for the dematerialisation regime for apply: negotiability, standardisation and intended for the capital market. The consequence would be an undisputed facilitation of divestment transactions, in terms of cost, formalities and timeliness, thereby creating an effective secondary market for dematerialised SME quotas and, consequently, increasing their value.

In other words, competition between countries also runs in the market for rules governing the stock exchange and financial instruments. The Green Paper is a starting point, the consultation was an additional stimulus. All these ideas now deserve an outlet, a final assessment and, in some cases, an appropriate legislative framework.

Martino Liva

Martino.liva@crccdlex.com

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