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DEBT FINANCIAL MARKETS TRENDS IN ITALY FOR THE YEARS 2020 / 2021



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Marco is the Head of the Debt Financial Markets Department at Gianni & Origoni. He specialises in capital markets and financial markets' regulations, with a focus on debt issues and restructurings, structured finance and derivative transactions (with a particular emphasis on credit derivatives and regulatory capital-driven structures). He assists

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Having graduated in Law from the University of Milan, Marco joined the firm in 1996 after completing his LL.M. at University of London, Queen Mary and Westfield College.

In addition to his legal practice, Marco writes and speaks about legal issues in the financial markets. He is regularly invited as a speaker at conferences organised by International organisations and bodies such as the ICMA (International Capital Markets Association).

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Having worked with Gianni & Origoni for 20 years, Elena specialises in a range of debt issuances and restructurings, structured finance, derivative and financial-insurance transactions. She has solid experience in the debt financial markets' regulatory field and provides legal assistance to banks, investment firms, insurance undertakings, local

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Elena has a significant industry knowledge, having spent about one year on secondment at two primary investment banks in London at the legal departments of the Investment Banking and European Equity Derivatives Divisions of such banks, respectively.

After graduating in Law, she obtained an LL.M in Corporate and Securities Law from the University of London, London School of Economics and Political Science and a PHD in Business Law from the University of Rome "Luiss Guido Carli".

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In March 2020 a lockdown was declared in Italy, the first country after China experiencing an out of control outbreak of COVID-19. The wealthier and more industrially advanced northern part of the Country was the most critically affected area by what had by then been declared a world pandemic.

The unprecedented health crisis in post-world wars times determined a total halt in all economic productive activities, with the Italian government busy to issue measure after measure to contain the spread of the virus and all-size companies trying to quickly scale-up their IT infrastructures so to allow their workforce to work from home.

The Italian Government was relatively quick to set-up extraordinary measures to help companies facing an unprecedented economic shock, including in the debt financial markets sector. Most notably, by means of Law No. 40 of 5 June 2020, converting into law with amendments Law Decree No. 23 of 8 April 2020 (the so called "Decreto Liquidità"), the so called "Garanzia Italia" by SACE S.p.A. ("SACE"), the Italian export credit agency wholly owned by Cassa Depositi e Prestiti S.p.A. ("CDP", which in turn is State owned), was extended from bank lending to the underwriting of bonds and other debt instruments. In particular, in order to ensure liquidity to Italian companies affected by the pandemic (other than banks and other credit institutions), SACE was permitted to issue guarantees in

compliance with the EU temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (the "EU Temporary Framework"), in favour of entities (including banks and national and international financial institutions) underwriting bonds or other debt instruments issued by Italian corporates which were not in distress as of 31 December 2019. Depending on the size of the Italian issuer, the guarantee can cover up to 90% of the issued amount and the proceeds thereof must be used for the greatest part to fund employees costs, rents, investments or working capital for factories and enterprises based in Italy. The guarantee by SACE is irrevocable and first demand and by law it is itself covered by a first demand and without recourse State guarantee. Apart from instances requiring an *ad hoc* procedure, and subject to certain individual thresholds applicable to each issuer, it can guarantee issuances up to €99 million.

Being the targets of the "Garanzia Italia" mostly medium and small companies issuing the so called "mini-bonds", it is doubtful how successful this Governmental endeavour can actually become. In fact, in addition to the condition that the guarantee can be granted only if the Italian issuer obtains a rating at least equal to BB- or equivalent by a leading rating agency¹ (which could indeed be quite burdensome for some smaller issuers), the application procedure to obtain the guarantee by SACE is quite complex, many pre-conditions must be met and it must include the appointment of an arranger in

¹ Where the rating granted is lower than BBB- or equivalent, the initial underwriters of the bonds or other debt instruments are required to keep at least 30% of the aggregate nominal value of the issued bonds until maturity.

charge of structuring and managing the relevant issuance. It involves a due diligence by both the arranger and SACE. Additionally, given the extraordinary nature of the measure, the possibility to apply to obtain the guarantee by SACE is quite limited in time: it was initially granted only until 31 December 2020 and subsequently (actually - due firstly to a legislative hitch and second to the political standstill caused by the resignation of the Italian Prime Minister at the beginning of 2021 - only after such deadline expired), extended until 30 June 2021². At the time of writing, based on the publicly available data and information, it appears that only a handful of debt issuers have availed themselves of the “Garanzia Italia”, against a much more widespread use of the “Garanzia Italia” to secure bank lending.

Not quite equally so prompt, but possibly justified by the scale of the commitment at stake, was the establishment by the Italian Government of a segregated pool of assets (the so called “Patrimonio Rilancio”) by CDP, aimed at supporting and restarting the Italian economic and productive sectors affected by the pandemic. Firstly envisaged by Article 27 of Law Decree No. 34 of 19 May 2020 (the so called “Decreto Rilancio”), as converted into law with amendments by Law No. 77 of 17 July 2020, it was not until the enactment of the Decree by the Ministry of Economy and Finance No. 26 of 3 February 2021, which entered into force on 25 March 2021, that the procedural terms and conditions for the set-up of the “Patrimonio Rilancio” were set out. €44 billion have been granted to the “Patrimonio Rilancio”, for CDP to invest in the real economy, also by means of (i) underwriting subordinated convertible, non-convertible or mandatory convertible bonds in the context of the EU Temporary Framework, and (ii) underwriting or purchasing on the secondary market unsubordinated convertible bonds at market conditions. The investments by the “Patrimonio Rilancio” are targeted to listed or unlisted Italian joint stock companies (*società per azioni*) registering yearly revenues of more than €50 million, with the exclusion of banks, insurance companies and other financial intermediaries. Each investment by the “Patrimonio Rilancio” is, subject to individual requirements, capped at €2 billion. A State guarantee will cover the obligations undertaken by the “Patrimonio Rilancio”, which can fund its investments also by means of issuance of bonds or other debt financial instruments (but without being required to comply with (a) most of the provisions of the Italian Civil Code setting out to the rules for the issuance of bonds by Italian joint stock companies and (b) the limits on deposit taking set out by Legislative Decree No. 385 of 1 September 1993, as amended, i.e., the so called Italian Banking Act).

At the time of writing, the “Patrimonio Rilancio” is still not completely up and running, as its terms and conditions are still due to be approved. What is clear is that its investments are aimed at supporting strategically important corporates in the Italian landscape, also taking into account their occupational levels. But also that some measures, namely the investments in subordinated convertible, non-convertible or mandatory convertible bonds carried out in the context of the EU Temporary Framework are quite short lived, as they must be completed by 30 June or 30 September 2021, as the case may be. Unless, of course, such measures are extended along the lines anticipated for the EU Temporary Framework itself³.

The economic downturn already quite prominent in the Italian

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debt financial markets landscape at the beginning of 2020, which was aggravated by the extraordinary events linked to the pandemic outbreak (and mostly driven by the persisting lack of liquidity in the real economy), continued to translate into requests by corporate issuers for waivers of financial covenants set out in debt instruments or, more broadly, restructuring agreements or composition plans with creditors. The rules relating to the call of bondholders meetings set out in many euro-bonds by Italian corporates, often governed by English or U.S. law, were put to the test to an extent not really experienced before. In particular, the voting mechanics, often involving multiple clearing systems and Italian rules not always compatible with the technical functioning thereof, created quite significant complications in terms of procedural steps to ensure that all bondholders, especially in case of widely spread bonds, were given the opportunity to express their vote. The appointment of tabulation agents was often necessary to reach out to bondholders and assist them to untangle themselves from the procedural complications (often not really understandable to non-experts) relating to the provisions of voting instructions or the requests of voting certificates. Italian consent solicitation rules, addressed to listed companies and corporates having bonds listed on regulated markets, were at times used on a voluntary basis by issuers of unlisted bonds (or bonds only traded on other platforms, such as multi trading facilities) in order to make the voting process at bondholders meetings smoother and more successful. Issuers were given the option - by extraordinary measures enacted as early as March 2020 (and which continued to be extended in the course of the months) in relation to the health emergency arising from COVID-19 to limit the spread of the contagion - for bondholders meetings to be held exclusively by telecommunication means, provided that all participants could be identified, attend the meeting and exercise their voting rights. Although necessary, the set-up of audio-video conference tools and distance voting systems potentially involving hundreds of participants was an additional hurdle for corporate issuers. The overall complications relating to voting at bondholders meetings often caused worries that possible objections from bondholders on the manner such meetings had taken place and the vote expressed could have a disastrous chain effect on the success of restructuring agreements or composition plans involving a wider mass of corporate creditors.

On the other hand, this provided a unique opportunity for lawyers

² Just before going to print, on 30 April 2021 a draft legislative decree (the so called “Decreto Sostegni Bis”) was published envisaging an extension to 31 December 2021 of the possibility to apply for the “Garanzia Italia” by SACE, including in relation to the underwriting of debt instruments.

³ The same draft Decreto Sostegni Bis mentioned in footnote (2) above envisages the extension of the possibility for the “Patrimonio Destinato” to make investments under the EU Temporary Framework until 31 December 2021.

and advisors assisting corporate issuers to grasp the “real world” of technical mechanics that had often been written in corporate bonds documentation without ever being tested in practice. And it will certainly prove to be a useful added know-how for years to come, given the expectation that quite a few more of such restructurings will have to be implemented.

Despite the economic downturn, the years 2020/2021 have seen a steady interest in sustainable bonds (and green bonds in particular), mostly issued by leading Italian utilities corporations (Terna S.p.A. and Iren S.p.A., to name some). Notwithstanding (i) the lack of a binding harmonised European legal framework; (ii) the absence of any tax benefits and (iii) the well-known concerns due to the lack of issuers’ accountability, the interest by investors has remained high, especially for listed debt instruments. Several bonds were admitted to listing on the Green and Social Segment of Borsa Italiana S.p.A. (“Borsa Italiana”), created in 2017. Along the lines of initiatives undertaken by several stock exchanges throughout Europe, and in compliance with the proposed and currently non-binding Green Bond Standards issued by the EU Technical Expert Group on Sustainable Finance, Borsa Italiana’s Green and Social Segment rules require issuers to set out (pre-issuance) a framework relating to the use of proceeds, which must be accompanied by an independent external certification, and to publish ongoing annual updates relating to the use of proceeds (until such proceeds are fully allocated). Borsa Italiana is a member of the Sustainable Stock Exchanges Initiative promoted by the United Nations and is one of the observers of the Green Bonds Principles by the International Capital Markets Association. These procedures and credentials certainly represent a reassurance for investors in the Italian debt financial markets in terms of issuers’ accountability.

Some sustainability-linked bonds (i.e., those in relation with payouts can vary depending on whether the issuer achieves pre-defined Environmental Social and Governance (“ESG”) objectives within the terms set out therein) and transition bonds (i.e., e. those issued by companies operating in the sectors that support the transition to a low-environmental impact economy) were also issued during the period and listed on the Green and Social Segment by Borsa Italiana (e.g., bonds issued by Veritas S.p.A. and Snam S.p.A.).

As of March 2021, 151 green and social bonds are outstanding on the Fixed Income list of Borsa Italiana, worth €213 billion. There are 40 issuers in the Green and Social Segment, including corporate, supranational, government and banking issuers. In addition, proof of the fact that ESG issues are of interest not only for large listed issuers but also for small and medium companies that represent the Italian industrial backbone, from the launch of the Green and Social Segment 8 unlisted small and medium companies already issued listed “mini” green bonds, with a total of €111.4 million raised.

The first Italian green government bond (“BTP Green”) ever saw its first tranche issued in March 2021, with demand exceeding €80 billion on an overall amount of €8.5 billion being issued. This was an absolute record on requests for inaugural green bond issuances by EU member States. On the primary market, the BTP Green was offered to institutional investors only, of which ESG institutional investors underwrote more than half of the issued amount. The BTP Green is aimed at financing governmental expenditures

having positive environmental impact. On a yearly basis the Italian government will publish on their website a so called “Italian Sovereign Green Bond Allocation and Impact Report”.

Despite the economic downturn, the years 2020/2021 have seen a steady interest in sustainable bonds.

The so called “basket bonds” deserve a final note in relation to recent market trends in the Italian debt financial markets landscape. “Basket bonds” made their first appearance by means of Law No. 145 of 30 December 2018 (the “2019 Budget Law”), which provided that some restrictions imposed by the Italian Civil Code to the issuance of bonds and other debt instruments made by Italian corporates (i.e., share capital and/or listing requirements and/or subscription and sale restrictions) may be overcome if such bonds are securitised and on-sold to professional investors by a special purpose vehicle (“SPV”) as asset backed securities (“ABS”) admitted to listing. In short, “basket bonds” typically involve the repackaging and listing of debt instruments (mostly “mini-bonds”) issued by small and medium companies and initially underwritten by securitisation SPVs. The scope of the Italian legislator was to encourage small and medium Italian corporates, which would otherwise be unable to attract investments from qualified and institutional investors, to access the debt financial markets. This measure certainly contributed to broaden the range of financing instruments available to Italian small and medium companies in response to the shortage of lending by credit institutions of the last decade.

Although the issue and listing of “basket bonds” has not peaked during 2020/2021, there is growing interest by market participants and an expectation that more and more financial institutions will push for the use thereof, by carrying out an active role of attracting small and medium-sized issuers for the structuring and organisation of the basket.

Given the lack of consolidated market practice with respect to these structures, some grey areas remain. Among others, the practical difficulties for SPVs having listed their ABS to meet the obligations under the market abuse regulation (i.e. Regulation (EU) No 596/2014) and transparency regime (i.e. Directive 2004/109/EC) must be addressed at a contractual level. Especially so considering that the underlying debt instruments included in the basket are (i) unlisted, (ii) issued by corporate issuers unrelated with each other and with the SPV itself and (iii) issued by usually quite unsophisticated corporates. Cross collateralisation issues will also need to be resolved, considering that the different bonds included in the basket are to be secured by security packages of different nature and value, depending on the individual issuer.