Banche Assicurazioni Finanza

Italian Banking Insurance and Finance Federation

The Italian financial community's priorities in the European agenda of 2020-2021

December 2020

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This note was prepared by the Italian Banking Insurance and Finance Federation (FeBAF) and its members to undertake a joint dialogue with Italian MEPs.

The Italian Banking Insurance and Finance Federation (FeBAF) was established in 2008 by the Italian Banking Association (ABI) and the Italian Insurance Association (ANIA). The Federation, which acts as a forum for the investment and financial industry, currently comprises thirteen associations operating on the financial markets: ABI, ANIA, AIFI, and ADEPP, AIPB, ANFIR, ASSOFIDUCIARIA, ASSOFIN, ASSOGESTIONI, ASSOIMMOBILIARE, ASSOPREVIDENZA, ASSORETI, ASSOSIM.

The Federation, which has offices in Rome and Brussels:

- is open to collaboration with other business associations;
- promotes the role of the banking, insurance and financial industry in harmony with Italy's general interests;
- represents the positions of member associations on economic and social policies in relations with political and monetary authorities and trade associations and towards public opinion;
- protects business logic and spreads a culture of competitiveness, by promoting transparency and service to consumers and savers in the banking, insurance and financial industries.

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Introduction

The pandemic is hitting hard. The ECB estimates that the proportion of enterprises that might have to tackle a liquidity crisis due to Covid would be, without support policies, 26% in Spain, 22% in Germany, 21% in France and 16% in Italy; conversely, with short-term active support policies - the ones initially rolled out on a variety of fronts by Governments with the contribution of the European Union - the proportion would decrease to 13% in Spain, 18% in Germany, 6% in France and 9% in Italy (with almost one Italian enterprise in ten unable to survive). We cannot afford this. Likewise, the EU cannot afford a 3% decline in its potential “Output” - the highest level of production sustained over the long term.

Still, the EU did respond to the first major healthcare and economic crisis in its history. Immediately after the first wave hit, it did so by sharing a number of measures and emergency funds and it is doing it again now during the present new pandemic shock which is not sparing anyone – be it in terms of human life, society and the economy.

The agreements sealed by the Government in Brussels over the last few months to provide substantial financing for national restart plans alongside the new exceptional ECB support measures and the lifting of stringent budgetary constraints are an opportunity to be seized with the utmost coordination and practicality. These unprecedented measures boost the genuine European unitary spirit and prove that also the economies of individual Countries are now inextricably interconnected by highly integrated production processes in such a way that the weakness of one automatically impacts the other.

The financial sector in Europe, and in particular in Italy, has been called upon to undertake an unprecedented titanic commitment to help households and enterprises, the national healthcare system, the Civil Defense system and communities. This commitment has enabled to keep alive, amid the hardships of all, our economic and social fabric. While many things did fall through the cracks, the Country is hanging in, despite a thousand difficulties. Unlike during the international crisis of twelve years ago, this time round the financial sector was not a part of the problem; rather, it is key for the solution, especially in Italy. The proper, indispensable support having been ensured during the first phase, the challenge now is to calibrate the methods and timing of actions so as to seize recovery opportunities and avoid unproductive welfare dependency.

This said, just why is our document on the "priorities" for the economic and financial agenda that we submit every year in autumn to Italian EU MPs so important this year?

Because the unbreakable bond between the financial sector and the real economy has never been so clear as in this long-drawn-out emergency. Banks, insurers, funds and companies that contribute to the functioning of markets are the transmission belt of economic and monetary policies that must be able to operate without uncertainty. And never as this year the "priorities" identified by the Banking Insurance and Finance Federation (FeBAF) and its 13 members are proposed for the benefit of the real economy and the overall resilience of Europe rather than as mere requests to defend specific interests. These priorities are an all-encompassing, well-structured proposal made by an important sector and aiming for a public-private partnership that combines, at multiple levels, the principles of subsidiarity that are inherent in the EU and its Member States.

We want to confidently look at the Next Generation EU as a project – so much so that we do not want to play it down by over-simplistically calling it Recovery Fund. It is not just about "recovery". Indeed, it is meant to lay the groundwork for the EU of the future; likewise, it is not just a "fund", as its instruments are more structured and complex, even though this financing is crucial, and Italy will receive substantial resources.

This poses two challenges in one, with both having to be addressed simultaneously.
Indeed, on the one hand, as a Country, we will have to be able to plan and spend, select few core priorities and skillfully and resolutely pursue them. Being aware that "there's no free lunch", we will have to carefully select, implement and report on projects. Our Federation can rely on a wealth of competences and a broad variety of experts from diverse backgrounds and as such is willing to offer its contribution to the Government and European institutions.

On the other hand, the complexity of European *governance* requires that the mechanism that has identified and guided European funds be first approved by the 27 national MPs and subsequently by European institutions. As always, time is not an independent variable: while the surgery may be successful - as we do hope it will be - in the meantime the patient "dies". Therefore, it will be essential to immediately introduce reforms and tools for the benefit of the economy at a national level alongside the resources that will – when they will – come from the European Union.

Never had we lived a pandemic before. So, when it came, Covid-19 managed to disrupt our habits, our lifestyles, our "normality" in just a few months. Historically, though, many major catastrophes

and “black swans” eventually paved the way for radical changes for the better. The legacy of lockdown measures is a set of behaviors that are already becoming new lifestyles: from *smart working* to the *e-commerce* hype. The way we work, consume and move has changed. The financial world interprets our changing needs and trends to provide quick, adequate responses and propose avenues to the future.

A review of the European regulatory framework is needed in order for us to be able to help, protect and finance enterprises and entrepreneurship, households and new welfare needs aiming for sustainability, innovation and the integration of capital markets. The regulatory architecture conceived before the pandemic must factor in the latter, starting from the prudential criteria for banking and insurance which - for now - penalize the investments in the real economy and infrastructures. That is to say the two drivers of a long-lasting recovery for Italy as a protagonist of a competitive Europe in the new world balance. It would be paradoxical and self-damaging especially for the other geographies in the world that adopt very different criteria, but which are fully entitled to operate, as they do, in our continent.

In the pages that follow, we will explain our proposals in detail.

Luigi Abete – President, FeBAF

Executive Summary

The EU is strongly committed to adopt a variety of instruments aiming firstly to address the pandemic emergency and subsequently to restart the economy. The second, broader epidemic wave raises a number of questions on the choices to be made in view of the economic and social strength of European countries.

After the first phase of urgent regulatory actions, action is now needed to prevent the pro-cyclical, adverse and unintended effects deriving from the application of the existing regulatory framework. To this end, it would be important to temporarily suspend or re-modulate a targeted number of regulatory constraints of the financial regulatory framework. Indeed, one should be mindful that many of the new rules approved in the wake of the previous financial crisis resulted from a different economic background and were conceived to tackle an ordinary crisis rather than such a vast crisis as the one triggered by the pandemic.

It should be noted that many of the rules written for banking, financial or insurance players ultimately could impact enterprises and households and, as a result, employment and the overall social strength of the Country.

The priorities

1. Modify existing rules on NPLs, AMC and State aids

In order to enable banks to use all available resources to finance the real economy during an economic shock triggered by an exogenous factor, targeted rules on NPLs should be modified, even on a temporary basis. In this way, while the regulatory framework would remain unaltered, it would be made temporarily more flexible as to tackle the effects of the pandemic. To this end, we propose:

- a temporary adjustment in the application of the *"definition of default"* and some of its technical aspects, mainly for the benefit of enterprises;
- temporary adjustments to the "*calendar provisioning*" - the prudential framework for mandatory provisioning of NPLs under the European Regulation and ECB expectations and supervisory practices;

- in view of future NPL disposals, an extension of the time window for the application of the adjusted calculation of the effects coming from NPLs' massive disposals (art. 500 CRR);
- the development of domestic *Asset Management Companies (AMCs)* as part of a Europe-wide network
- the organic review of the 2013 DG COMP Communication on state aids so as to avoid *burden sharing* in case of NPL disposal;

2. Solvency II

As a number of criticalities have emerged in these early years of application of the new regime, it is necessary to pay the utmost attention to the planned review process, the second phase of which is currently underway.

The main criticality is the fact that some Solvency II rules expose insurers to excessive asset volatility and are inconsistent with the industry business model, to the point of penalizing those very long-term products and investments that should be the distinctive element of their financial strategy.

To this end, we propose to:

- modify the *Volatility Adjustment*, aimed to dampen the impacts of financial markets artificial volatility as, in the most critical times, it failed to work properly. These modifications of the mechanism should factor in the long time-horizon of the insurance business that is capable of withstanding and reabsorbing extreme volatility episodes in the mid-term;
- improve the calibration of capital requirements for equity and bond investors, which are still too high – especially for long durations – to allow for a greater exposure of insurers to these financial instruments;
- correct some criticalities in the interest rate risk proposal as the latter does not take account of the peculiar features of the insurance business and, more broadly, the efficient functioning of financial markets.

3. Management of failing LSIs and harmonization of bank insolvency regimes

The introduction of a specific procedure for LSIs that do not meet the "public interest" criteria

under the BRRD appears crucial as this would preserve the residual value of the institutions and hence it would maximize the interests of creditors.

Besides, the banking insolvency regime should be harmonized at EU level.

4. The IFRS 17 accounting standard

In view of the future approval of the new international accounting standard on insurance contracts (IFRS 17) and given that, based on its current wording, some of its parts are inapplicable, we request that this principle be modified so as to solve the criticality relating to the requirement of annual cohorts.

It is crucial to find a European solution that provides for an exception to the application of the requirement that the contracts in respect of segregated funds be aggregated in annual cohorts in that such requirement is not consistent with the structural characteristics of the underlying business.

5. Capital Markets Union

The actions proposed by the Commission in the Action Plan appear to be in line with the needs of the banks operating in capital markets as issuers and intermediaries and of insurers, in particular by strengthening the role of long-term investors and recognizing the role that private integrative pension schemes can play in addressing the challenges of population aging. The Actions proposed should be swiftly implemented, in line with the original goals.

6. Basel 3: finalizing post-crisis reform

In view of the future transposition of the standards in the EU regulation, we highlight the need to implement such international standards *cum grano salis*, so as to take account of the specificities of the European economy and of a growth-oriented regulatory framework. The impact analyses made prior to the pandemic should be made anew.

7. Sustainable Finance

The rules currently under discussion should encourage players to strengthen their contribution towards a sustainable economic and social development. To this end, it is fundamental to ensure

consistency between the regulations being implemented (Transparency Regulation – SFDR - and Taxonomy Regulation in the first place) and the modifications to the existing regulations (MiFID and UCITS) in view of promoting transparency and unlocking investment opportunities for retail investors.

It is equally important that the new regulations prioritize the establishment of a solid information chain that starts from the issuers and reaches out to final investors and that rests on shared standards and identified relevant indicators, in agreement with the principle of proportionality and adequate application timing. It would be useful to establish an information “HUB” available to investors.

Banks and insurers should be required to disclose information on the sustainability of their portfolios or **assets** only if they have sufficient reliable information.

8. The digital challenge

We are in favor of the Commission’s proposal to equip the Union with a specific regulatory framework for “*crypto-assets*”. Certainty of the law, protection of consumers and investors and financial stability have to be guaranteed.

Having regard to the payments’ strategy, we appreciate the Commission’s willingness to evaluate in depth the market situation before adopting any initiatives that would be binding for players.

We deem essential to ensure an adequate European framework that is in favor of innovation and enables consumers, enterprises and new market players to benefit from the opportunities offered by digitalization, eliminating any regulatory obstacles that curb innovation and facilitating access to and use of data as well as supporting greater use of new technologies. The clearer and more detailed the definitions in the rules, the easier for innovation to move in a new playing field.

9. MIFID

While awaiting the comprehensive MiFID review, a new category, i.e. the “expert” client, should be considered and evaluated according to specified parameters, including portfolio size; besides, the category of non-complex financial products should be broadened and the quality and availability of reference data for professional investors should be improved.

10. Trust-like institutions

Hopefully, Community law will adopt clear and homogeneous regulations to govern trust-like institutions.

1. Modification of existing rules on NPLs

Matter

a) The "Capital Market Recovery Package" and the new proposals on NPL securitizations

After the initial "*quick fix*" carrying targeted modifications to the banking regulation (in particular, the European Regulation on banks' capital requirements - CRR), the Commission published a second package of proposals to quickly modify MiFID II, the Prospectus Regulation and securitization rules.

Discussions on this package (a.k.a. *Capital Markets Recovery Package*) are well underway among European co-legislators.

The aim of targeted modifications to securitization rules is to make the latter easy to use during the post-pandemic recovery, enabling banks to expand their lending and clean up their balance sheets from NPEs. To be more precise, the proposal introduces a specific definition of NPL securitization subject to ad hoc rules, based on the evidence that banks would be overly penalized, especially in terms of capital absorption, if they apply to NPLs the rules on performing loans.

Removal of existing regulatory obstacles to NPE securitization would enable to help banks clean up their balance sheets from such exposures.

However, the modifications proposed pose a number of issues that might instead discourage from using securitization to manage NPLs.

The crucial point is the *Risk Weight (RW)* of NPE securitization: contrary also to the latest Standard by the Basel Committee, a proper balance should be achieved so as to avoid unwanted deterrents and take in due account the disposals of UTP besides NPLs.

b) Application of the default Definition

Particular attention should be given to prudential rules on the classification of non-performing assets (so-called definition of *default*) whereby banks are required to classify debtors as defaulted in case of *past dues* exceeding 90 days or where an *unlikeliness to pay* can be assumed.

This rule could have significant adverse impacts on enterprises (more than on banks) in terms of access to credit, especially when moratoria lift.

In the present economic situation, late payments are more likely to happen also in the case of substantially solid debtors that are having temporary difficulties; hence, it would be appropriate to introduce – for the benefit of enterprises – an element of flexibility, even if on a temporary basis. Likewise, the technical criterion for distressed restructuring under the EBA Guidelines should be reconsidered.

Along these lines, the EESC - European Economic and Social Committee - released an opinion (ECO-529) that hopefully will be taken into consideration by European legislators.

c) "Calendar provisioning" (EU Regulation) and ECB Guidelines on NPLs

Considering the impact of Covid, temporary adjustments should be made to the prudential framework (i.e. the European Regulation and ECB supervisory expectations and practices) in respect of the *calendar provisioning*.

The *calendar provisioning* Regulation should be temporarily modified so as to extend the period currently foreseen for the provisioning. This modification is also necessary because in many Countries courts have been closed and credit recovery and foreclosure proceedings have been deferred or delayed with resulting long-drawn-out recovery actions and adverse impacts on the primary and secondary markets of NPLs. Such modification is also fundamental in order to prevent a greater disparity between banks and non-financial institutions, with the latter not being subject to the same rules as banks; NPL markets might ultimately be under pressure due to the increase and resulting disposal of NPLs that would entail a massive shift of wealth away from banks to less regulated players.

Here again, the EESC - European Economic and Social Committee - released an opinion along these lines (ECO-529) that hopefully will be taken into consideration by European co-legislators.

d) Article 500 of CRR: extension of the existing deadline

In consideration of the current economic situation, the June 2022 deadline for using the *Loss Given Default* - LGD modified calculation in case of massive NPL disposals under article 500 of the CRR (as modified under CRR2) should be extended, hopefully, to 2024. In fact, when this regulatory

modification was drawn up, the European legislator had already allowed banks to adjust the LDG calculation in case of massive NPL disposals in order to forestall adverse impacts on banks' capital due to extraordinary market situations.

e) "Asset Management Companies" and the review of European regulations on State aids

National "Asset Management Companies" (NAMCs) should be incentivized, possibly as part of a Europe-wide network, in view of a more efficient NPL management. The operation of AMCs requires a homogeneous regulatory framework across Europe that defines the characteristics and operating methods of NAMCs.

As NAMCs often feature a public *governance* framework, one of the main aspects to be considered in this regard is finding the proper balance between preserving the financial stability without however interfering with the proper operation of a secondary NPL market with multiple, competing private players.

From this point of view, a specific set of rules should be established in respect of the NAMCs that operate as part of bank resolution plans that have been agreed to and authorized by supervisory authorities. In this case, as with preventive recapitalization deals which are already possible under the Bank Recovery and Resolution Directive (BRRD), the NAMC could operate under conditions that minimize adverse impacts on the capital of the bank that sells the NPL pool and hence at a better pricing compared to the market, which inevitably factor in the weak bargaining power of the seller. These deals, under specified conditions, should be exonerated from the rules on State aids and therefore they should not be subject to the existing burden-sharing procedures under the communication of the European Commission on State aids to financial intermediaries. A harmonized regulatory framework would avoid the long-drawn-out authorization process for these deals which are under the remit of multiple authorities that pursue different purposes (competition vs stability) thus facilitating and accelerating the recovery.

As to the NAMCs that are not involved in the resolution of distressed institutions, the situation is different. Indeed, in this case the operations of the NAMCs should be subject to the rules that apply to other private players so as to not "crowd out" the private market. In this sense, careful consideration is needed to ensure equal treatment for banks and non-banks in the purchase and management of NPL portfolios through a modification of article 127 CRR.

Our stance

The modifications – including temporary ones – pointed out above appear to be essential for banks to use all the available resources to finance the real economy as the current economic shock results from a health-related emergency that in no way depends on the willingness of enterprises and banks. Enterprises and banks should nonetheless be allowed to temporarily have more flexibility and avoid the stringent approaches that originated in situations that were completely different from the current one, having a pro-cyclical effect in this economic scenario as well as a considerable social impact.

Next steps

We are discussing in depth these technical proposals with all European institutions, the ministries of finance and supervisory authorities in view of achieving the widest possible consensus on the modifications proposed.

2. The revision of Solvency II

Matter

Solvency II, the new European prudential supervisory regime, entered into force in all EU Countries on January 1, 2016.

The Solvency Directive requires a number of periodical audits and reviews on the operation of the system, the first one– targeting some more immediate adjustments to the Solvency II Delegated Acts (Level 2 regulation) – ended on June, 18, 2018 with the publication in the Official Journal of the European Union of the new Solvency II Delegated Acts , whereas the second and broader one, started in February 2019, is still in progress and focuses on deeper changes to the Solvency II Directive (Level 1 regulation).

An essential piece of this review concerns a package of measures dedicated to insurance products with long-term guarantees (the so-called “Long-Term Guarantee Measures”) and some refinements to the long-term equity risk category.

Highlights

The main items discussed during the **first phase** were: the operation of volatility adjustment and in particular its national component, which did not work as expected (despite the official review being scheduled for the second phase); the risk margin calculation methodology and, in particular, the methods for calibrating the cost of capital level; the calibration of interest rate risk; the introduction of a new asset class (with less penalizing capital requirements) in respect of “long-term” equity investments; the methodologies for calculating the absorption capacity of deferred taxes; the calibration of capital requirements for investments in unrated debt instruments and unlisted equity stocks; the calibration of pricing risk sub-modules for credit and surety and of underwriting risk sub-modules.

The **second phase** of the review process concerns in particular:

a) volatility adjustment;
b) matching adjustment;

c) equity risk measures;

d) interest rate risk.

Our stance

Solvency II has represented a strong evolution of the prudential regulatory framework for the insurance industry. It has introduced innovative principles for the industry (e.g., "market-consistency"), a risk-based approach to calculating capital requirements and a strong incentive to improve risk-management functions in firms.

If, on the one hand, these yearly years of implementation have proven to work fairly well, strengthening the sector overall, on the other, they have highlighted some important shortcomings in the new regime, making this review process even more important for insurance companies.

The main criticality is that some Solvency II rules expose insurers to excessive market volatility, which is inconsistent with the long-term view of almost all insurers' business models, to the detriment of those long-term products and investments that should instead represent the distinctive element of the financial role of the insurance industry.

The review should also learn the right lessons from the COVID-19 crisis. The current situation has highlighted, more than ever before, the need to address artificial volatility stemming from the new prudential rules. This is clearly pointed out also in the recent Expert Report of the European Commission on Capital Markets Union (CMU).

These issues are vital for Italian insurers.

One of these issues is called "Volatility Adjustment", a regulatory tool that aims to mitigate the impact of artificial volatility in financial markets which, however, has proven not to provide the necessary relief when needed. The Italian industry needs effective modifications of the mechanism for it to correctly reflect the long-term nature of the insurance business, thus being able to withstand short-term market volatility. As of today, the VA does not capture adequately national market volatility, leaving insurers exposed to short-term fluctuations of Italian Government Debt, an asset in which Italian insurers invest a lot (approximately 50% of their overall investments).

Fixing the Volatility Adjustment would mean putting Italian insurance companies in a better position to invest with a long-term horizon, both in corporate and in public debt.

Likewise, the criteria to meet to include equity investments into a special category called "Long-Term Equity", which would benefit from lower capital charges, should be reviewed. As of today, these criteria are still extremely difficult to meet, thus contributing to maintain regulatory cost for equity investments under Solvency II still almost unbearable.

Making the "Long-Term Equity" category work would mean allowing insurers to increase investments in European equity, in close coordination with the European Commission's plans on the Capital Markets Union.

Similar considerations apply to bonds, as the methodology for calculating capital requirements penalizes longer-maturity and unrated securities. The 2018 review did provide for a reduction of these requirements subject to criteria which are still too restrictive and, in many cases, poorly specified.

As regards interest rate risk, though acknowledging the need to reflect negative rates, we wish to point out that the methodology proposed by EIOPA assumes that interest rates could decrease to unprecedented negative levels but does not seem to fully capture the possibility of financial markets ceasing to work as we know it in case of ultra-negative interest rates. To reflect the possibility that investors would keep the cash in their pockets if interest rates decreased too much, we believe that a floor should be introduced in the downward shock in the interest rate risk module.

Other priorities for the Italian market in the review include a) the modifications of the risk margin calculation methodology (already proposed in the first phase) and b) measures allowing for a comprehensive implementation of the proportionality principle in Solvency II.

Next steps

- Relating to the second phase, **in December 2020 EIOPA will publish its final advice** in response to the Commission's requests, which sets forth the proposed modifications to the Solvency II Directive worked out based on discussions with stakeholders.
- By **Q3 2021**, the **Commission is expected to present its proposal to modify the SII Directive**. The proposed modification will then be submitted to the European Parliament and Council for

examination. Hopefully, the criticalities pointed out above will be taken into due account in the course of the examination of the proposed modifications by ECON.

Banche Assicurazioni Finanza

Italian Banking Insurance and Finance Federation

3. Management of LSI crises – Harmonization of banks' insolvency regimes

Matter

Under the current EU legal framework, three resolution requirements must be fulfilled, as follows: (i) determination by the ECB that the institution is *failing or is likely to fail* (FLOF), (ii) absence of alternative suitable options to forestall failure within a reasonable period of time (e.g., intervention of the private sector or regulatory actions), and (iii) positive evaluation by the SRB that resolution is in the public interest. In other words, through the Public Interest Assessment (PIA), the Authority evaluates weather resolution goals[1] would be equally achievable should the bank be in liquidation under an ordinary insolvency procedure.

As a result, where banks fail the "public interest" test, they have to be managed through national insolvency procedures, which are currently not harmonized across the EU. So far in the banking Union this category of banks would potentially include all LSIs as well as a number of SIs. Without a European harmonization, the risk is that this regulatory framework will lead to inconsistent outcomes for similar failures and cause a so-called atomistic liquidation of the intermediary (a solution that does not ensure orderly management of failures).

Highlights

As well known, given the economic and social importance of the banking business, a bank's atomistic liquidation is inefficient and risks posing major operating problems.

Following the US experience and in view of a more efficient management of failing Sis, we hope to achieve an EU-wide harmonized liquidation procedure for financial institutions that fail the public interest test. Indeed, such a set of rules would adequately take account of the specificities of this type of enterprises and, accordingly, could help the speed up of insolvency procedures, a better preservation of the residual value of failing institutions and ultimately a better protection of creditors' interests.

[1] The BRRD and the SRMR have the following resolution objectives: to guarantee the continuity of essential functions; to avoid significant negative effects on financial stability; to safeguard public funds; to protect depositors; to protect clients' funds and activities.

Next steps

The Italian banking association (ABI) is representing to European institutions the need to introduce the regulations referred to above in the European framework.

4. Accounting standard (IFRS 17)

Matter

In May 2017, the International Accounting Standard Board (IASB) issued the new international accounting standard IFRS 17, which establishes new requirements for insurance contracts. These requirements will apply to the financial statements prepared in agreement with the IFRS international accounting standards.

After the publication of the principle, the European Commission, which should transpose in Europe the international accounting standard, requested EFRAG (European Financial Reporting Advisory Group) to give its opinion on the accounting standard.

For the purposes of the *endorsement* process, in September 2018 EFRAG sent a letter to IASB pointing out six aspects of the principle that it needed to examine further.

Starting from October 2018, the IASB has made a number of remarks on possible modifications of the standard in the wake of the several criticalities identified by various stakeholders. In June 2019 the IASB published the “Amendments to IFRS 17” Exposure Draft.

Based on feedback comments, the IASB, one year later published a new version of IFRS 17.

On September 29, the EFRAG published the Draft Endorsement Advice on the standard, which provides for a four-month consultation period.

Highlights

The 25 *issues* analyzed by the IASB to consider possible amendments to IFRS 17 included those deemed to be particularly critical for the Italian insurance market: requirement to aggregate contracts by annual cohorts and year of entry into force of the principle.

To be more precise, the requirement to aggregate by *“annual cohort”* is deemed to be inconsistent with present business management practices, especially in the case of segregated funds based on inter-generational mutuality, besides implying significant modifications to existing evaluation systems and processes and a major *effort* in terms of resources and costs. The Italian insurance association (ANIA) as well as the European insurance industry and the EFRAG, in the various consultations ahead of the publication of the standard in June, always highlighted that application

of IFRS 17 with the cohort requirement would also impact the Income Statement in terms of *mismatching* and accounting inconsistencies, as well as the inadequate representation of profits.

Having regard to timing, we still believe that, in terms of the date of first application of the principle, at least two more years were necessary compared to the date provided for under IFRS 17 (2021).

While, as we hoped for, the standard published with the different amendments made by IASB will enter into force in 2023, the requirement of annual cohorts, instead, remained unaltered.

With Insurance Europe a stance has been defined that points out how the majority of members support possible interventions by the European Commission aimed to modify the principle in order to solve the issue of cohorts, though others believe the principle should be approved without modifications and hope for a world-wide principle.

Last July, the insurers' associations of Italy, France, Spain, Denmark, Czech Republic, Poland and Romania sent a Joint Statement to EFRAG and to the European Commission reinstating that the requirement of annual cohorts is inconsistent with the life insurance business as the latter is characterized by inter-generational mutuality, just like our segregated funds, and for "*cash-flow-matched*" contracts in the Spanish and UK markets. Under the Statement it is hoped that an exception will be added for this type of contract and, in particular, it is requested that the European Commission and Member States develop a European solution for the *issue* of annual cohorts.

The Cover Letter of the draft Advice for the European Commission, published by EFRAG at the end of September, shows that the Standard meets the criteria for approval, Europe-wide, of all of its requirements, except for the one relating to the annual cohorts for the contracts characterized by inter-generational mutuality and/or that are "*cash-flow matched*". These types of contracts are widespread in different Countries such as Italy, France, Spain, Denmark and Germany. Indeed, it is pointed out that EFRAG board members are unable to achieve a consensus on this requirement: for 7 members out of 16 the annual cohorts are inconsistent with the approval criteria established by IAS Regulation and are not in the general interest of Europe as they add operational complexities with no benefits in terms of information besides encouraging pro-cyclical effects.

Our stance

We believe that, as it is now, IFRS 17 is inapplicable. It is therefore fundamental to modify it so as to overcome/solve the criticality relating to the annual cohort requirement.

It is crucial to identify a European solution that provides for an exception to the application of annual cohorts to life products characterized by inter-generational mutuality such as our segregated funds and *cash-flow-matched* contracts.

We therefore believe that an intervention of the European Commission is necessary.

Next steps

ANIA will participate in the consultation started by EFRAG on the draft Advice. Subsequent to the publication of the final Advice, the Commission will draw up a draft approval Regulation that will be voted by majority by ARC (the accounting regulation committee chaired by the Commission and comprised of the representatives of EU countries).

Finally, the European Parliament and the Council will have three months to object to the adoption of the Principle. Failing an objection, the Commission will adopt the approval Regulation and publish it in the Official Journal of the European Union.

5. Capital Markets Union

Matter

a) **The Capital Market "Recovery Package" and targeted modifications to MiFIDII and to the Prospectus rules**

The European Commission has proposed a number of modifications, including some on a temporary basis, of capital markets regulations so as to support the economic recovery after the COVID19-related crisis (so-called Recovery Package), relating to a simplification of the MIFID regulation, Prospectus and Securitizations rules. Both the European Council and the Parliament have started working to finalize the regulatory text.

Highlights

As regards MiFIDII, the proposals are in respect of a number of simplifications / exemptions from the requirements of intermediaries vis-à-vis their clients (especially professionals and qualified counterparties) on *product governance*, disclosure to customers, reporting costs and charges, *"best execution"* reporting. The evaluation of these simplification actions is moderately positive, but it appears to have a too limited scope.

As regards the actions on Prospectus regulations, the most important novelties are the introduction of a new, shorter Prospectus (so-called "*Recovery Prospectus*") for listed European companies, the temporary increase in the threshold for the exemption from the Prospectus offerings of debt instruments when issued by banks on an ongoing basis and the extension of the timeframe available to intermediaries to contact investors in case of publication of a supplement to the Prospectus (1 working day from publication instead of same day as publication). If, on the one hand, the two actions seem to be positive (i.e., reduce burdens and barriers for the enterprises that enter the capital market), the last proposal does not appear to be satisfactory because a one-day deferral does not solve the issue for intermediaries as they have to contact and inform investors, especially if the latter are not available to be contacted electronically.

b) The CMU Action Plan

On September 24, the European Commission published the new Capital Markets Union Action Plan, which aims to strengthen the Capital Markets Union.

The document follows the indications of the "Final Report" of the High-Level Forum of independent experts set up by the European Commission in order to collect the views of market players and the academia on the initiatives necessary to relaunch the capital market. The Plan proposes 16 legislative and non-legislative actions that pursue three macro-goals:

- support a green, digital, inclusive and resilient recovery, making lending more accessible to European enterprises;
- make the EU a safer place for retail and long-term retail investors;
- integrate domestic capital markets in a real single market.

Highlights

The CMU action plan is closely connected to European sustainable finance initiatives currently underway. The goal is to steer private capitals towards energy transition and the remaining environmental initiatives, in parallel with the EU "Green Deal" investment plan, eliminating the regulatory obstacles to long-term, sustainable investments. To this end, the Commission will present its renewed strategy for sustainable finance aimed to increase private investments in sustainable activities and projects and, at the same time, integrate environmental and climate-related factors in the European financial system. The Plan also specifies that, as such, transition-aligned measures will be taken also for SMEs, given that the latter are the backbone of European economy. As part of this, also long-term equity treatment and the modifications proposed to the ELTIF regime are particularly important, just as much as the need for a more appropriate calibration of risk-weighting requirements.

Our stance

The actions proposed under the Plan appear to be in line with the requirements of banks, insurers and other players (the former, when operating in the capital market as issuers and intermediaries, in particular for the placement of corporate debt and equity and for *market making*, and the latter as investors in unlisted corporate *equity*) in terms of strengthening the role of long-term investors and acknowledging the role that integrative private pensions can play in addressing the challenges of population aging.

Next steps

Our members are following the implementation of the Plan by the Commission and deep-diving as necessary in the actions that are most interesting for their members, including based on the planning provided by the Commission and in coordination with their respective European Federations.

6. Implementation of the Basel 3 finalizing post-crisis reform

Matter

In December 2017, the Basel Committee approved a package of new prudential regulation standards for finalizing the reform package known as "Basel 3". The new international standards should have been applied starting from January 1, 2022. The process for transposing the Basel Committee measures (hereafter referred to as "Basel 3+") in the EU body of regulations started in 2018 with the impact analysis required from EBA by the EU Commission. During 2019, the EBA published the findings of its analyses and its Recommendations. In Q4 2019 the Commission started a public Consultation that ended on January 3, 2020.

Because of the COVID 19 pandemic, the Basel Committee postponed to 2023 the scheduled application date for the new standards. The publication by the Commission of the legislative proposal, scheduled for June 2020, was postponed (most likely to the first half of 2021). Meanwhile, the Commission requested the EBA to update the impact analysis in view, amongst others, of incorporating, though to a limited extent, the effects of the crisis.

Our stance

In view of transposing the standards into EU regulations, we wish to point out the need for a reasoned implementation of international standards that takes account of the specificities of the European economy and of the importance of outlining a growth-oriented regulatory framework, even more in light of the present situation where it is necessary to convey all available resources to support the recovery.

In this regard, set out below are just some of the main themes:

- maintaining (and possibly strengthening) the SMEs Supporting Factor and the one relating to infrastructure financing;
- introducing an appropriate treatment for credit exposures to *unrated* corporates;
- avoiding the proposed rules on off-balance sheet exposures;

- a better definition of the treatment of *equity* exposures (consistently with the goal of the CMU);
- maintaining the existing exemption for the CVA requirement;
- the need to appropriately define some aspects of the rules on operational risk so that they are not penalizing for European banks;
- the introduction of an incentive for sustainable activities (as appropriately defined in relation to their characteristics and riskiness);
- the need to appropriately outline the output *floor application*;
- the possibility, especially for those banking groups that are present in multiple countries, to calculate requirements on a consolidated basis (overcoming the current *Home/Host* regime);
- the possibility to properly measure capital absorptions in the case of residential mortgages with a lower LTV;
- when transposing Basel Standards, the need to fine-tune or further extend the Danish Compromise.

Next steps

Since a long time, we have been representing to European institutions the demands of the industry in view of encouraging lending to the economy and supporting a return to growth. More precisely, we demand that the implementation of international standards takes account of better and more updated impact analysis, the specificities of the European economy and the present difficulties due to Covid-19 and its long-term impacts. Furthermore, this peculiar economic context should be reflected in the timeline for the definition and application of the new regulatory framework.

Banche Assicurazioni Finanza
Italian Banking Insurance and Finance Federation

7. Sustainable finance

Matter

In September 2019, the Commission incorporated the sustainable finance strategy, initiated in 2018, in the "European Green Deal". The purpose of these strategies is to make Europe the first climate-neutral continent by 2050, by aligning its target to the 2015 Paris Agreement and the UN guidance on the adoption of ESG (*Environment, Social and Governance*) factors. The initial goal to cut 40% of CO2 emissions by 2030 was raised by the Commission to 55%. The Commission intends to pursue this goal through the investment plan for a sustainable Europe and since public financial resources alone will not be sufficient, the intention is to create conditions for private investments to be massively conveyed to sustainable activities. Climate- and energy-related goals will entail additional annual investments of approximately €260bn (or 1.5% of the European GDP) for the upcoming decade.

We wait for the Commission's proposal on the "new sustainable finance strategy" that should be released by the end of 2020.

Highlights

The European Green Deal strategy is focused on a series of strategic activities[2]. As part of the initiatives that aim to engage private finance, some recent evolutions are particularly interesting:

[2] • *"Climate-neutral"* Europe; circular economy; real estate renovation; zero pollution; ecosystems and biodiversity; "Farm-to-fork"; transport; research, development and innovation; external relations;

• Public finance: which pursues the goal of "leave no one behind ". In this context, the Commission proposed the "Just Transition Mechanism", i.e. a financing system aimed to help the regions that more heavily depend on fossil fuel to quickly adapt to the sustainable transformation underway;

• Private finance: which aims to convey private investments to environmentally and socially sustainable activities (so-called Taxonomy); ii) Benchmark and iii) Disclosure

a. In the course of the year, the Technical Expert Group (TEG) released its first report on the Taxonomy Regulation identifying the criteria for pinpointing the economic activities with the worst "*carbon footprint*".

b. In October 2020, the Expert working group was set up to replace the TEG. This Group will have to concretely start defining an EU platform (Platform for Sustainable Finance) that enables investors to have ongoing access to the financial and sustainability information of companies and will have to give advice to the Commission.

c. Consultation activities were started for the implementation of delegated acts on the "disclosure" regulation.

d. The Commission has presented proposals aimed to include customers' preferences as to sustainability as well as the sustainability risks under MiFID II and IDD.

e. The Commission started reviewing the "Non-Financial Reporting Directive" (NFRD) in order to include such elements as are essential for identifying sustainable activities in disclosure addressed to customers.

f. Based on the TEG proposal (of March 2020), the Commission carried out a consultation on the implementation of the standard to be adapted for green bonds. The outcomes of the consultation - ended in October 2020 - will be disclosed at the beginning of 2021.

On January 14, 2020, the Commission presented the "Sustainable Europe Investment Plan" (SEIP), with a view to increasing *funding* for sustainability and mobilizing private resources (€1,000bn in 10 years), encouraging incentives to unlock and re-direct public and private investments, giving support to public authorities and project promoters.

Our stance

We agree with the sustainable finance goals of the European Commission's Action Plan and hope for a European reference framework.

For example, we believe that now, works on the taxonomy should not be limited to building a regulatory framework focused exclusively on private markets; rather, they should also include the government bonds market, which accounts for a large proportion of investments.

For now, financial players are very concerned for the complexity of new organizational and structural processes arising from the new Community regulatory framework on sustainability. In particular, the implementation timelines for all economic players should be consistent with

the need for supply chains to adjust. As such, it will be extremely important to guarantee the principle of proportionality, taking account of the size, nature and scale of the activity of the various economic and financial players. This legislation is important for both the *disclosure* and stress *testing* of ESG factors which are being investigated.

As regards in particular the "Disclosure" regulation, the timeline for finalizing technical rules is critical as they are the root cause of the difficulty that intermediaries are having in implementing all new requirements, pending approval of detailed rules. As to the draft RTS, the approach adopted by the ESAs raises important questions such as the non-availability of the data required, the complexity and the high cost of implementing the new requirements.

Having regard to the SMEs, the EU should require a minimum set of ESG data on targeted environmental and social information. Furthermore, the EU should support the development of a *Hub*, open to the public for free, that gathers and makes available environmental data and ESG information, including the data reported under the Non-Financial Reporting Directive (NFRD) and other relevant ESG data. As to banks, they should be required to report information on the sustainability of their portfolios/assets only if sufficient, reliable information is available.

From the viewpoint of investors and active managers, we hope for more and more usable ESG disclosure, resting on a solid, Europe-wide standardized information chain, relating to the key variables of sustainability, encompassing issuers, investors / *asset managers*, final investors / *asset owners*; likewise, we hope that, according to the principle of proportionality and with sufficient time, the regulation aims for identifying a few key variables subject to mandatory disclosure from all issuers (possibly varying by activity sector) and extended to all of the issues traded on European platforms.

The next steps

Our members are representing the above to European institutions.

8. The digital challenge

Matter

On September 24, 2020, the European Commission presented the digital finance package aiming for an all-encompassing strategy for Europe intended to fill the digital and technological gap vis-à-vis China and the United States of America and to restore the continent's technological sovereignty. The digital strategy, alongside the "European Green Deal", plays a central role in the Commission's plans.

The legislative package includes:

- Communication on the digital finance strategy for the EU;
- a regulation proposal on Markets in "*Crypto-assets*" (MICA);
- a regulation proposal on "Digital Operational Resilience Act (DORA)";
- a regulation proposal on a pilot regime for market infrastructures based on *"distributed ledger technology"* (DLT);
- a Directive proposal modifying Directives 2006/43, 2009/65, 2009/138, 2011/61, 2013/36, 2014/65, 2015/2366, 2016/2341, thus allowing to remove constraints on the use of DLT (Distributed Ledger Technology)-based infrastructures;
- a Communication on the EU Retail Payments Strategy (RTS).

Crypto-assets regulation (MICA)

This proposal aims to ensure certainty of the law for the *"Crypto-assets"* that are not covered by the current EU legislation and to establish uniform EU-wide rules for the issuers of Crypto-assets and the providers of related services ("Virtual Asset Service Providers", or VASP). The regulation will replace the existing national frameworks applying to assets which for the time being are not under the scope of the EU legislation currently in force, thus ensuring the *level-playing field* (also thanks to the legislative process of regulations, which do not require a national transposition process).

The MiCA provides the broadest possible definitions of *"Crypto-assets"* and *"distributed ledger technology"* so as to encompass all types of Crypto-assets that are currently not covered by the

existing EU legislation on financial services and e-money. As such, the regulation is compatible with future technologies and capable of keeping up with the industry's innovation and technology developments.

The regulation excludes from its scope the crypto-assets that qualify as "financial instruments" or "e-money", which remain governed by the existing EU legislation, i.e., by the Markets in Financial Instruments Directive (MiFID) and the Electronic Money Directive (EMD) respectively.

Finally, the regulation includes a section on the powers entrusted to relevant authorities by individual Member States and on the cooperation among the designated relevant authorities, ESMA and EBA.

Regulation and Directive on the Digital Operational Resilience Act (DORA)

The Commission intends to establish a regulatory framework that strengthens the digital sector and the resilience of the EU financial entities.

The absence of common EU rules on digital operational resilience has led to the proliferation of national initiatives and distinct supervisory approaches, which, given the cross-border nature of IT risks, are now inadequate.

Therefore, the regulatory proposal aims to:

- harmonize the operational digital component;
- align corporate strategies to ICT risk management;
- harmonize and streamline ICT incident reporting by monitoring, registering and classifying ICT incidents and reporting the most severe ones to relevant authorities;
- identify the weaknesses of ICT infrastructures and enable immediate implementation of corrective measures;
- ensure proper monitoring of third parties' ICT risk;
- promote convergence on the supervisory approaches to the third sector of the ICT.

Regulation on a pilot regime for DLT-based market infrastructures

The proposed PILOT regulation aims to allow experimentation of *Distributed Ledger Technologies* (DLT) as applied to market infrastructures, giving certainty of the law and operational flexibility as *to trading*, *post-trading*, issuance and circulation of *crypto-assets* (as financial instruments).

The Commission deemed it appropriate to identify a pilot group for the experimentation of DLT market infrastructures.

Technology-implementation-related risks concern the criteria of proportionality of the rules, the potential costs for the system arising from the development and adoption of such technology.

MiFID II and MiFIR are among the European rules that are going to be impacted by implementations.

Retail Payments Strategy

The Retail Payments Strategy intends to aggregate within an organic framework all such actions as aim to:

a) ensure that European users have a diversified range of payment services and systems supported by a competitive and innovative payments market that is based on secure, efficient and accessible infrastructures;

b) enable pan-European payments solutions so as to secure Europe's strategic autonomy;

c) support the role of the Euro in the international scenario, thus helping improve the efficiency of *"cross-border"* payments.

In view of achieving these goals, the Commission is going to take a number of initiatives/actions in the coming 4 years, including:

- instant payment solutions that are increasingly digital and have a *"pan-Eu reach"*;
- innovative and competitive payments market. The actions relating to this goal focus on the future review of the PSD 2 (scheduled for the end of 2021) and on the fine-tuning of a proposal for a "New Framework for Open Finance" (mid-2022);
- efficient and interoperable retail payments systems and infrastructures;
- efficient international payments, including remittances.

In addition, the Commission is going to survey the level of acceptance of digital payments, investigating the reasons for limited use, where this turns out to be the case, monitor non-acceptance of cash in some countries so as to consider possible actions to be taken, if any, and work with the ECB to identify and share goals and the policy options needed to support the possible issuance of "Central Bank digital currency".

Our stance

We are in favor of the work done by the Commission in view of equipping the EU with a specific regulatory framework for *"Crypto-assets"* that can ensure certainty of the law and promote innovation in this sector. In particular, we wish to highlight the urgent necessity to introduce adequate levels of consumer and investor protection as well as measures aimed to protect the financial stability and integrity of the market.

To this end, considering the fast spread and potential penetration of some instruments before the MICA regulation comes into force, it is necessary to promptly provide a certain and broad framework to regulate this sector.

As already stated, we deem necessary that these rules be designed in full compliance with the principle of proportionality, which is particularly urgent in relation to the DORA proposal and, in particular, in relation to the measures to be implemented, the types of entities involved, their size and the operational costs of implementing ICT systems, as the latter are required to comply with the resilience criteria that will be adopted.

Finally, having regard to the payments strategy, we appreciate the willingness of the Commission to evaluate in depth the market situation before adopting any initiatives that mandate adoption by Payments Service Providers (PSPs) from November 2021 and to consider possible criteria to bring this initiative in line with market requirements.

As to the PSD2 Review – scheduled for the end of 2021 – maybe it would be necessary to consider extending this deadline, given that implementation is taking longer than expected and also in order to enable the market to fully seize the opportunities unlocked by the Directive.

Having regard to the Communication on the EU digital finance strategy, the insurance industry has highlighted the importance of ensuring that the regulatory framework for financial services be favorable to innovation and digital technologies, technologically neutral and sufficiently *future-proof* to enable adaptation to the digital era.
Furthermore, for the insurance sector, it is therefore fundamental to respect the principle of "same assets, same risks, same rules" and support a really equal standing of all market players.

It will be fundamental to maintain levelled conditions between European insurers and *“bigtech”* players, in particular in terms of access to data and potential data monopolies. This means ensuring that the same regulation applies to new players and incumbents and that the latter are not unduly constrained in terms of their ability to compete due to the existing requirements under the regulations and supervision of the European financial sector.

It is crucial to ensure the same level of protection for customers, regardless of whether they are served by incumbents or new players, including small *start-ups* or global *bigtech* companies.
It will be up to legislators to review the application of existing rules so as to adapt them to digital developments, without trying to automatically add fresh regulations.

Next steps

Our members are discussing with the institutions involved so as to represent their requests. Detailed analyses are being carried out on the regulatory proposals that have been published or are being studied. The MICA Regulation proposal is being studied by the working groups of ABI and EBF which will send a feedback to the Commission by the December 16 deadline.

9. Markets in Financial Instrument Directive (MIFIDII) Review

Matter

Over two and a half years have elapsed since the MIFID first entered into force and since then significant progress has been made in the operation, transparency, efficiency and integration of EU financial markets, with a resulting increase in their competitiveness. Still, for some sectors it is necessary to further examine the operation of the regulatory framework in order to consider if and to what extent the goals of co-legislators have actually been achieved.

For this reason, public consultations have taken place over the last two years (as regards *"investor protection"* and *"secondary markets"* alike) that contributed to the publication by ESMS of analyses and reports on the key provisions of MiFID II.

Along the same lines, in the first half of the current year the Commission carried out a public consultation on the review of the MiFID regulatory framework with the primary goal of improving the transparency of European markets, their appeal for investors and, at the same time, make it easier for enterprises to access the capital market.

It should be noted that more urgent legislative modifications are underway subsequent to the Commission's proposal for a capital market recovery package in response to the Covid-19 pandemic.

Our stance

The review is of fundamental importance. The main goal is to propose modifications of some MiFID provisions so that its requirements can be applied more efficiently while ensuring adequate investor protection and a high level of market transparency.

Investor protection:

- we believe that ex-ante disclosure requirements should be applied in a more proportionate manner, based on customer type (professionals and qualified counterparties or retail investors), financial instrument and type of financial service provided; it is equally necessary

to improve coordination of ex-ante communication, costs, charges and what is required under PRIIPs KID;

- the non-complex product category should be broadened;
- a more detailed arrangement of customer classification is necessary, through a review of the criteria for identifying professional customers and with the addition of the new category of so-called expert investors who have adequate experience and financial resources to understand the risks related to financial instruments/products, possibly also by adjusting the relevant portfolio threshold;
- more flexible rules should be introduced when complex products are offered as part of the presentation of investment advisory services;
- no absolute bans should apply to incentives;
- review of provisions on investment research (unbundling): SMEs investment research is fundamental to make enterprises more visible to investors and develop SME equity markets. The new MiFID II provisions on this matter and especially the so-called *unbundling* obligation adversely impacted the financial research market in Europe and especially in Italy (reduction of market coverage, of the research produced and of the number of analysts). So, while it is necessary to intervene on regulations, we believe that targeted actions should be taken so as to incentivize, including in fiscal terms, the supply of research, and ensure the survival of *"local brokers"*, who account for almost all of the research produced on SMEs listed on peripheral markets.

Market structure, transparency and *reporting:*

- data quality: a priority in the MiFID II review should be the improvement of the quality and availability of reference data, including through a targeted, well-established system of post-trading information publication. Despite the efforts made, the ESMA databases needed for the full implementation of the transparency regime still have gaps. These databases need further adjustments including in view of *Brexit* as the data that comes from British industry will no longer be included in ESMA calculations. As a result, applicable methodologies will have to be simplified and adjusted as a significant proportion of providers and data will no longer be available;

- *"Traded on a traded venue"* (TOTV): the notion of TOTV is fundamental for both the transparency regime and that of transaction reporting under MiFIR and we agree with ESMA that is should be revisited;
- cost of market data: these costs have increased significantly since the introduction of MiFID II and use of the same by market players is growing quantity-wise as well as in terms of variety (higher fees, new cost items on top of unclear and complex market data policies and definitions);
- need to harmonize the various reporting regimes (MiFID II/MiFIR, EMIR, SFTR; REMIT, Short Selling Reg, MAR) so as to avoid or reduce overlapping and duplications;
- "Share Trading Obligation" (STO).

Next steps

Q4 2021 is the deadline established by the European Commission for reviewing the Directive as part of the presentation of the work program for 2021. While approval by CMRP is upcoming for some modifications of MiFID, we believe that the Commission should proceed with a generalized review of the regulation, as was expected to be the case before the COVID-19 crisis.

Our members have represented to European Institutions the needs that have emerged from the first period of implementation of MiFID and the corrective actions that they hope will be introduced during the review in order to enhance implementation effectiveness while protecting investors and market transparency.

10. European initiatives regarding taxation ("Digital Tax", "Financial Transaction Tax")

Digital Taxation

On March 21, 2018, in the wake of the Council conclusions of December 5, 2017 as to the response to the challenges of the digital economy taxation, the European Commission presented its "digital taxation package". The package is comprised of:

i) proposed Council directive establishing the rules on the taxation of companies with a significant digital presence (proposal based on article 115 of the EU Finance Act);

ii) Commission recommendation on the taxation of companies with a significant digital presence;

iii) proposed Council directive relating to the common system of digital services tax on the income from the provision of specified digital services (proposal based on article 113 of the EU Finance Act);

iv) *"Time to establish a modern, fair and efficient taxation standard for the digital economy"* memorandum.

The package has been examined by the Council. In March 2019, given the impossibility to achieve an agreement, the then Romanian Presidency had suggested to continue working with a two-track approach, as follows:

a) the first, aimed to address the fiscal challenges of the digital economy, provided that the Council and Member States would continue to work jointly to achieve an agreement on an OECD-wide global solution by 2020;

b) the second, instead, in the event of it being impossible to achieve an OECD-wide agreement by the end of 2020, provided that the Council could, if necessary, discuss once more the DAT/DSTD and the possible EU approach to the fiscal challenges of digitalization.

International developments of the digital tax

Given that Council works are underway, discussions on the *"digital tax"* have been accelerated globally. Still, at an international level, these discussions go beyond the tax challenges of the digital economy and aim to a more radical reform of international corporate taxation.

International discussions revolve around two main pillars:

- pillar one (*"re-allocation on taxing right"* – unified approach) addresses the broader challenges of the digital economy, focusing on the attribution of taxing rights, included the taxable presence without the traditional physical presence of a company in a given jurisdiction;
- pillar two (GloBE – *"Global Anti-Base Erosion Proposal"*) through the proposition of taxation at a minimum effective rate at a global level, which aims to mitigate the risks arising from the practice of shifting profits to jurisdictions in which they can be subject to no taxation or in any case to very low taxation.

While the general principle of pillar one received broad political support, works on pillar two were faced with more resistance.

In the absence of a global agreement, the goal of the "Inclusive Framework" (IF) is now to quickly address the remaining issues in view of a successfully finalizing the process by mid-2021;

To this end, on October 12, 2020, the IF published a package including the report on the project for pillar one and pillar two.

The Commission actively supports discussions with the OECD and G20 and is ready to step in if no global agreement is achieved by mid 2021. A digital tax on companies with sales exceeding €750bn could generate up to €1.3bn per year in the EU budget.

The *"digital tax"* is also part of the system of own resources to help finance the repayment of principal and interest of the funds raised from the market as part of "Next Generation EU". Should it be introduced within 2024, the national contributions of Member States to the 2012-2027 financial framework might be lower, in proportion to their respective economy, than the amounts paid in 2020.

Our stance

We support the OECD Digital Economy project; a shared international solution to the issue of the profits of enterprises with a substantial digital presence on which tax has not been paid in the market of users would mean that large international groups would no longer have to manage

multiple local and/or European taxes on digital services which results in higher taxation and administrative charges.

Having regard to pillar one, we are in favor of the OECD expressly recognizing, in the October 2020 report, that the banking and insurance sectors should not be subject to the new taxation right relating to automated digital services. We fully support their conclusions considering that the financial regulation that governs the banking services sector generally requires that in every market the entities with adequate capitalization be maintained to carry out the activity in the market in question. Furthermore, the OECD recognizes that in the insurance business the inversion of the production cycle causes profits volatility as a result of which it would be difficult to allocate “extra profits” to the various jurisdictions.

As to the rules on minimum taxation under pillar two, we hope for openness in respect of regulated financial activities considering that the financial regulation automatically implies a strong local presence (besides expensive capital and liquidity requirements) and is often accompanied by substantial sector-based taxation that also makes up the overall local tax burden of banks. The same considerations apply to insurance, which is subject in Italy to a regulation that is as pervasive as the one for the banking business. The life insurance business is also subject to a sort of annual capital tax on the mathematical reserves in the accounts of insurers. More broadly, in order to minimize *compliance* charges, the tax rules that require minimum taxation should not be exceedingly complex and hard to manage in administrative terms. In addition, ANIA suggests to carefully consider the consequences of including reinsurance transactions among the elements that, per se, indicate *high-risk services payments*.

The “Financial Transaction Tax” - FTT

The proposed directive on a common financial transaction tax (FTT) was originally presented by the European Commission to the Council on September 28, 2011. No unanimous agreement having been achieved by the Member States, as requested by eleven of them, on February 14, 2013, the Commission submitted a proposed Council directive for a stronger cooperation on financial transactions taxation.
To date, discussions on the FTT are still underway among the thirteen Member States that participate in the stronger cooperation mechanism (Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain).

In any case, the European Union, in the course of the next Long-Term Financial Plan, will work towards the introduction of additional own funds including a financial transaction tax. The

proceedings from the new own funds introduced after 2021 will be used for advance repayment of the "Next Generation EU" loan.

Even though no official statement has been released, we understand that the States that participate in the strengthened cooperation mechanism are still having difficulties in closing negotiations.

As regards the internal situation of individual Countries, following on from the initiative of France, which established its own FTT starting from August 2012, also Italy adopted its own FTT, starting from March 1, 2013, with, however, a very limited scope compared to the original scheme under the directive. Essentially, the Italian tax was introduced to increase tax receipts, though the actual collections from this tax turned out to be way lower than initially estimated. In many regards it is shaped around the French scheme, which is characterized by the presence of specific guarantees aimed to factor in the need to raise funds for the inland revenue while safeguarding the proper operation of financial markets. One feature that Italy and France have in common is the choice to exclude from the scope of application of the tax the entire sector of public and private loans while providing for a wide variety of exemptions. The main difference between the Italian scheme and the French one is the treatment of derivatives, which are always excluded from taxation in France whereas in Italy they are taxed if they refer to *equity* products. Other countries as well have taken initiatives for the introduction of a domestic FTT (the latest being Spain).

Our stance

If really necessary, the FTT should be introduced Europe-wide rather than just in individual States / groups of States.

This type of taxes is levied in case of market unbalances and as such can turn out to be distortive and accordingly impact *trading-related* business taxation. *Brexit* is a criticality that will further penalize continental markets compared to the London market, thus further segmenting the single market which instead should be more united.

We believe it is fundamental that the introduction, if any, of an FTT forestalls any and all penalization between direct and indirect investments made through Undertakings in Collective Investments (UCIs). In addition to this, we believe it is particularly important that EU lawmakers take in due account the exemption regime provided for by the Countries that have already introduced an FTT in their domestic law in respect of the financial transactions carried out on behalf of pension schemes.

Where the FTT is unavoidable, we are in favor of a Europe-wide FTT that is as close as possible to the one introduced in Italy as the latter was built in such a way as to limit the worst effects of the tax for specified sectors and operational segments that deserve being protected, above all integrative welfare schemes, providing that effective harmonization is ensured, and *compliance* costs are curbed.

For these reasons, where it is already in existence, the European FTT should entirely replace equivalent domestic taxes and prohibit the simultaneous existence of complementary local taxes that would result in some sort of gold plating and as a result generate competitive disadvantages and increase admin costs.

Next steps

We continue to follow the works underway and discuss with the institutions involved so as to obtain a regulatory definition that does not penalize markets and financial players. We believe it is particularly important for the European Commission to adopt the final *"Action Plan for Fair and Simple Taxation to Support the Recovery Strategy"* [COM (2020) 312 dated July 15, 2020].

The Action Plan aims to implement fair, efficient and sustainable taxation to support Europe's green and digital transition, taking account of the unprecedented economic crisis caused by the COVID-19 pandemic from which Member States have to recover.

This action plan identifies 25 lines of action to be implemented by 2024, among which, for the banking and insurance sector, the update and simplification of the financial services VAT regulation is vital (action #18).

The review of the financial services VAT regulation was long awaited and meets the need to simplify taxpayers' compliance in view of a competitive internal market. Already in 2019, the Commission initiated a study on action methods and the possible impacts of the reform: we believe that obsolete regulatory definitions should be modernized (including that of "insurance transactions" under article 135, § 1, letter a) of Directive 2006/112/CE) taking account of the growing digital economy and outsourcing of upstream services by financial and insurance players whose core activity is, as is well known, exempt from VAT (with a resulting penalization in terms of deductibility of the VAT paid upstream on purchases). One of the goals to be pursued along this avenue is to allow banks and insurers as well to use cost-sharing consortia (which has been prevented by recent ECJ guidance).

11. The Commission action plan to counter money laundering and the funding of terrorism

On May 7, 2020, the European Commission presented its global approach to further strengthen EU efforts to counter money laundering and the funding of terrorism in order to adequately respond to the weaknesses found in the system.

The Commission Action Plan covers three areas, as follows:

- Action Plan to implement a global EU policy to counter money laundering and the funding of terrorism;
- updating the list of non-EU countries considered to be at high risk for money laundering and funding of terrorism;
- reviewing the methodology used to identify non-EU countries with deficiencies in terms of AML.

In particular, the Action Plan hinges on three pillars, each of which aims to improve the global fight against money laundering and the funding of terrorism as well as strengthen the global role of the EU in this area.

Our stance

We are in favor of a greater harmonization of the provisions under the Action Plan through the adoption of the Regulation. The minimum harmonization approach underlying Community legislation in this matter resulted in a fragmented implementation of AML regulation in the various Member States.

Indeed, money laundering and the financing of terrorism should be prevented from weaving their way through in less protected areas as this would adversely impact the entire financial system; likewise, there should be no differences among Member States as to the contents and methods of implementing the obligations of adequate verification. Along the same lines, the regulatory framework should be strengthened in order to support intermediaries in case of cross-border activities that involve entities located in non-EU countries, in relation to which, it is still extremely complicated to fulfil AML obligations.

While we agree on the appropriateness of ongoing coordination and cooperation both between national authorities and between Financial Intelligence Units (FIUs), we have pointed out (as

appropriate among the options proposed in the questionnaire) to receive a feedback from FIUs on transactions reported as being suspect and promote the sharing of good practices.

Having regard to the supervisory architecture, the options proposed in the Action Plan can have different implementation costs and impacts. For this reason we believe that we cannot express our preference for a given option without a preliminary impact assessment initiated by the Commission and that takes account of the different costs and benefits of the proposals; all possible options should be considered, including the possibility that the status quo remains unaltered, with AML supervision still under the remit of national authorities; a further option would be a mechanism in line with the principle of subsidiarity and providing that, where there is a European supervisory authority, it should take action in the event of there being deficiencies or inefficiencies on the part of the national authority.

12. Packaged Retail Investment and Insurance Products (PRIIPs)

Matter

The public consultation on the modifications of the PRIIPs KID RTS started in October 2019. Virtually at the same time, the European Commission started consumer testing of the different methods of representing the performance scenarios of pre-contractual documents.

The public consultation ended on January 13, 2020 and discussions started between European supervisory Authorities and national ones to finally approve a shared draft of the modifications agreed to and send it to the European Commission. After several meetings, the EIOPA Board of Supervisors rejected the proposals to review the regulation, whereas EBA and ESMA voted in favor.

On July 20, 2020 the three European supervisory Authorities sent a letter to the Director General of DG FISMA to notify the rejection by the EIOPA BOS on the grounds that a partial review of the regulation was not appropriate and that any decisions would be postponed until the complete review of level 1- EU Regulation 1286/2014.

Highlights

The purpose of the public consultation, referred to as *"mini-review"*, was to address the main regulatory issues arisen in the first two years of use of the KID (EU Delegated Regulation 2017/653 implemented as from January 1, 2018), in particular with respect to information on costs and performance, and to pave the way for the application of KID to UCITS as well, in view of the upcoming end of their exemption.

Specifically, the *"mini-review"* proposed modifications of:

- performance scenarios, with respect to the methodology for linear and unit-linked products and the introduction of information on past performance;
- costs, in particular upon presentation;
- exemption of UCITS, with respect to the modifications to the PRIIPs Regulation;
- multi-option products, with respect to the cost structure shown in the related Generic KID.

Our stance

Process

As the European Commission's *consumer testing* was still underway when the consultation started, several elements of the draft RTS submitted by the ESAs were still being defined.

Despite its gaps, the draft approved by the ESAs was the best possible effort that the European supervisory authorities could make considering the stringent level 1 constraints, the short timeframe and the lack of adequate consumer testing.

The text containing the modifications of the proposed RTS failed to provide many technical details (e.g., technical details on the new methodologies, unclear definitions, etc.); as a result, further level 3 measures were necessary.

The very fact that a consensus among the European supervisory authorities was hard to come by shows that the current framework does not allow for enough flexibility in working out disclosure standards to suit all products concerned. This issue can only be tackled through an overall, organic review of the PRIIPs Regulation.

The level 1 review should include appropriate consumer testing, a consultation of the parties concerned and a holistic analysis of PRIIPs as well as of how this regulation fits in a broader legislative framework.

Performance and past performance disclosure scenarios

Besides reviewing future performance scenarios for linear and unit-linked products, the proposed modifications added the requirement to disclose information on the past *performance* of products, where possible, depending on their specific characteristics. Consumers should have been able to view this information through a link in the "other relevant information" section of the KID/SID or in the web page of the PRIIP producer.

Having regard to the change of methodology used for calculating performance scenarios in respect of linear and unit-linked products, the use of different methodologies in a given framework would have resulted in a different, non-comparable presentation of the performances for the different PRIIPs. The addition of past performance – outside and inside the KID – to the presentation of future performance scenarios would have neither simplified the KID contents nor improved consumer understanding.

As a matter of fact, in the European Commission's consumer testing a significant proportion of participants reported having established a connection between past performance and potential

future performance, whereas less than one third of consumers involved in the test answered correctly when asked about the relevance of past performance in view of potential future returns.

As such, the added value of modifying the presentation of performance scenarios as proposed by ESAs was questionable. The mere addition of information is not the solution. We believe that more time is needed to properly develop and test performance scenario methodologies and the related underlying hypotheses and to evaluate all possible options.

Costs

In relation to costs, modifications were foreseen for both of the tables shown in the KID: table 1 foresaw the introduction of aggregate costs in monetary and percentage terms (annual impact of costs), in addition to the Reduction in yield (RIY) revised by assuming a zero net performance in year 1 and based on a moderate scenario for the remaining holding periods; also, the indication of costs in half RHP was only proposed in respect of products with a RHP of 10 years and up; instead, table 2 foresaw a double cost indicator (% RIY for all insurance products versus costs in EUR for other products), the inclusion of a new column describing the basis for calculating each cost and a much deeper level of detail in respect of costs.

The proposals did not undergo consumer testing and would have made information pointlessly complex and hardly comparable. Broadly speaking, we did not understand why different cost indicators were used for different products, as this would have prevented comparability of different investment opportunities. Additional reasons for concern related to the granularity of cost representation in the second table as this was overly detailed and possibly misleading for consumers. What is more, such a presentation distorted relative cost levels over time, as the percentage costs of one year would have appeared to be artificially low. Besides, consumers would have been overloaded with information under this approach.

Multi-option Products (MOPs)

Another review proposal related to the separation, in the generic KID, of product costs (wrapper) from the costs associated to the underlying investment options, where the cost of the product would have been reported as a single value.

The proposal was not tested and underwent no consultation with the parties concerned; neither did it present any appreciable advantage against the burden of implementation. Rather, it would have ultimately overloaded consumers with additional information.

UCITS exemption

Level 1 EU Regulation 1286/2014 is meant to establish a single, standard pre-contractual disclosure document (KID) for all packaged retail investment and insurance products (PRIIPs). The set of investment products included both IBIPs and UCITS. Still, under article 32 of the regulation, this obligation applies to the former but not to the latter. The reason given for the "UCITS exemption" was a first "approximation" of the pre-contractual documentation of IBIPs, which are required to prepare the key information document (KID), to that of UCITS, which, under the UCITS Directive are still required to prepare a different key investor information document (KIID).

The goal being uniform documentation, this duplication is bound to disappear in December 2021.

Prior to the end of such exemption, the Level 2 PRIIPs regulation (article 14) provided that the MOPs with the option to invest in one or more UCITS be allowed to use, failing the UCITS KID, the fund's KIID instead. However, this exceptional provision will end in December 2021 (article 18), when UCITS will still be exempt from producing their own KID.

We therefore believe it is indispensable, in the event of the UCITS exemption being extended, to also extend the rule that allows use of KIIDs by the insurers that sell MOPs.

It is understood that prospectively there should be a single pre-contractual set of information for the various PRIIPs, which is an undeniable advantage for consumers who would thus have comparable documents. As said earlier, this alignment should take place as part of a general review of the regulation rather than as part of a mini-review of Level 2 regulation which would overburden all market players besides being of hardly useful to consumers.

Next steps

After the EIOPA BoS rejected the *mini-review* in July, the European Commission is still evaluating the possible next steps and has not yet ruled out continuing the review or preparing its own document that would in any case include modifications of the technical standards under the regulation. If the European Commission decides to continue the mini-review, any amendments to the RTS would need the support of both the European Parliament and the Council.

13. Level 2 regulation on Pan-European Pension Products (PEPPs)

Matter

On August 14, 2020, EIOPA sent to the European Commission a number of draft technical standards in respect of regulation and implementation as well as technical advice to finalize the new PEPP regulatory framework as required under "Level 1" regulation EU Regulation 2019/1238).

Indeed, PEPPs will have to have the same characteristics (except the final treatment) across the European Union and can be offered by a vast range of approved entities such as insurance companies, banks, pension funds, investment companies and *asset managers*.

Besides, PEPPs will offer individuals a new investment option EU-wide, that will be added to national personal and occupational schemes, but above all they will enable retail investors to continue contributing to their integrative pension scheme also if they move to another Member State.

Key points / Highlights

Level II technical standards are comprised of:

- technical rules governing disclosure before and during the term of contracts;
- *technical advice* on supervisory reporting;
- *technical advice* on the criteria relating to EIOPA powers to intervene on products;
- technical implementation standards on supervisory reporting and on the exchange of information between national supervisory Authorities and EIOPA.

The following are particularly interesting:

- PEPP disclosure will be digital and PEPP will be the first pension product with a *"digital-first"* type of distribution, i.e., for which digital disclosure will be encouraged as it will be on an equal footing with paper-based disclosure. Besides, PEPP providers and distributors can split pre-contractual disclosure into multiple layers so that customers will focus on the key product characteristics (product type; guarantees, if any; return and of course costs);

- the holistic risk-return assessment approach enables to introduce an innovative mechanism to determine, through a stochastic model, the level of risk of the underlying investment options, the return of the product considered in its entirety and such other information contained in the pre-contractual documentation as is, useful to understand the level of future pension performance;
- the presence of an all-in cap in respect of costs and fees for the Basic PEPP. All costs and fees, except for biometric, transfer and guarantee costs, are capped at 1% of the capital invested each year;
- the EIOPA powers of intervention usher in a new European supervisory framework; the Authority will keep a single, centralized PEPP register, will monitor the market and have the power to issue a temporary ban on - or restrict - the marketing, distribution or sale of the PEPP.

Our stance

Digitalization and disclosure

The RTS include the draft pre-contractual (for the PEPP KID) documentation and the one applicable during the term of the contract (PEPP performance Prospectus). This way, the information mandated to be provided to retail investors becomes standardized, as required by Level I regulation, and is comprised of two documents to be distributed mainly in digital as well as in paper format.

In a pan-European product such as PEPP, the harmonization of underlying rules and the creation of a pension product requires the standardization of disclosure documents. This would enable to easily compare the products that are eligible to be distributed by foreign and national companies. From this point of view, we positively view the legislator's push towards the digital. However, works in this area are still in their early stages. While the digitalization of disclosure documents is confirmed, EIOPA failed to provide such innovative solutions and legal certainty as would encourage this practice. No digital model has been created and tested and the layers of KID information have not been tested in such a way as to facilitate disclosure on PCs, tablets or smartphones. EIOPA requested that more work be done in this area, but it is unclear who could/should lead it and above all when.

Holistic approach to risk-reward evaluation

EIOPA established for PEPPs a holistic approach to risk, reward, performance and risk-mitigation techniques. This approach is feasible thanks to a stochastic economic model which, though governed by technical rules, can be freely modified. The Authority introduces performance scenarios that take account of the future (stochastic) dynamics of inflation, of a new risk indicator and of a brand-new cost indicator defined as "Reduction in Wealth" (RIW) to be incorporated in the prospectus of PEPP performance.

Likewise, EIOPA wants to introduce "*target* returns", requesting a probability of at least 80% in 40 years that PEPP performance exceeds the annual rate of inflation. Opting for complex solutions does not always ensure a more precise result. Adequate testing and validation of every model takes time and needs positive feedbacks. We are afraid that EIOPA's choice fails to meet these pre-requisites.

The requirement of target returns is no less of a concern for us as it goes over and above the terms of Level I Regulation 1238/2019 (under which the PEPP has to ensure capital protection at nominal levels) and raises practical questions as to how to foresee the inflation trend for such a long period of time and whether this is at all feasible, especially in light of the present economic situation. The methodologies for measuring PEPP risks and performances as well as the rules that govern the eligibility of investment options in the PEPP are fundamental for the European Commission when evaluating EIOPA proposals.

We appreciate that PEPP providers can opt to modify the model proposed under the technical standards. Still, it is unclear which hypotheses should be considered by the PEPP providers that wish to modify the model proposed under the technical standards. In order to ensure a level playing field, the final technical standards should indicate the requirements for the options available in this regard to PEPP providers.

Basic-option costs cap

It is particularly important to define the scope of application of the overall costs and fees cap, so that the latter becomes one of the most impactful elements in PEPP supply. It is not by chance that this criticality is also referred to in the cover letter of the RTS drafts that EIOPA sent to the European Commission. At least, upfront advice costs should be excluded. Given the complexity of the advice required for a welfare product such as PEPP, one can imagine that providers will hardly be able to meet the 1% cap.

We positively view that EIOPA recognized the possibility to exclude the costs of providing the capital guarantee from those applicable to basic PEPPs, with no prejudice to the fact that they have to be reported both in pre-contractual documents (PEPP KID) and during the term of the contract (Prospectus of PEPP performance).

In order to enable providers to design and launch a high-quality PEPP in the market, it appears necessary to reflect on its cost regime, in terms of both exclusions and the evidence that PEPP providers will be required to give in respect of such costs.

Next steps

The Level II regulation drafts developed by EIOPA are currently being examined by the European Commission, which will have to decide on their approval by the end of 2020. Thereafter, the texts will undergo examination by the European Parliament and Council, which can request, in the event of the texts having been rejected, up to 6 months (3+3). Within two days after passing such examinations, from the publication in the Official Journal of the European Union of the texts of Level II rules, the 12-month period will start that is necessary for implementing the PEPP Regulation (article 74 of Regulation 1238/2019). It is estimated that, in the best-case scenario, the first PEPPs will be on the market by the end of the first four-month period of 2022. We will be monitoring very carefully the long legislative process that is leading to the birth of the first pan-European pension product.
On the domestic front, in February 2020 the draft Delegated Law was presented for transposition by the Government of the (EU) PEPP Regulation 2019/1238. It is estimated that in the first four months of 2021 the relevant legislative decrees will be adopted for bringing national regulations in line with (EU) PEPP Regulation 2019/123

14. Review of the Alternative Investment Fund Managers Directive (AIFMD)

Matter

The European Commission has launched a consultation in view of the revision of the Alternative Investment Fund Managers Directive (Directive 2011/61/EU, AIFMD). The initiative is part of the wider Capital Markets Union program with the aim of creating a market for alternative investment funds as part of a stable financial system.

Highlights

The consultation, which will expiry on January 29, 2021, follows the letter published by ESMA last August which provided insights and suggestions on aspects that, in the opinion of the authority, should be reviewed. Among others, the following issues could have a positive impact on the current regulatory framework:

- greater coordination with MiFID II rules;
- need to define a category of semi-professional investors;
- higher proportionality in the remuneration policies;
- definition of a more homogeneous framework to allow states to operate a more effective supervision over sub threshold managers;
- proportionality regarding ESG/sustainable finance legislative package.

Our stance

There is a need to intervene on the following profiles:

- improving the passport regime established pursuant to the AIFM Directive, in particular by trying to limit the use of *"fees and charges"* imposed by the various national authorities in relation to the marketing of funds;
- creating, also in coordination with the provisions of MiFID II, a tailor-made regime for private capital funds, avoiding the adoption of a *"one-size-fits-all"* approach which, in relation to

specific obligations, involves an administrative and economic cost for private capital structures, inconsistent with the activities carried out;

- introducing a category of semi-professional investors who can invest in alternative funds starting from a minimum of 200 thousand euros (as provided, for example, in Germany) or 100 thousand euros (as provided for in French legislation) in order to also allow investors high-end "private" companies, equipped with the necessary skills, to contribute to a greater inflow of capital to Italian SMEs.

15. Fiduciary companies from a European perspective

Matter

Italy is the only Member State that has established several years ago fiduciary companies, i.e. companies acting as an enterprise that manages third-party assets acting as an authorized entity subject to the supervision of the Ministry of Economic Development. Other Member States, that have the same Roman civil law tradition, such as Luxembourg or France, have in their own domestic regulation the discipline of the fiduciary contract. The activities of the fiduciary companies are regulated by Law No. 1966 of 23 November 1939, Article 1, paragraph 1, as well as by the Italian Ministerial Decree of 16 January 1995. Fiduciary companies are included between the intermediaries and operators that must comply with anti-money laundering and counter-terrorism financing provisions set forth in Legislative Decree 231/2007.

Legislative Decree 141/2010 made provision for fiduciary companies controlled by banks, financial intermediaries or fiduciary companies with its paid-in capital not being lower than twice the amount set out in Article 2327 of the Civil code, to be registered in a separate section of the Register provided for in Article 106 of the Consolidated Banking Act (TUB) and to be subject to the Bank of Italy's anti-money laundering supervision.

These developments in the regulatory framework have, consequently, brought fiduciary companies once more within the scope of supervised financial intermediaries, without leading to the distortion of their vocation as an entity authorized to manage third-party assets.

Highlights

In compliance with the provisions of article 31, paragraph 10, of the IV Anti-Money Laundering Directive - as amended by the V Anti-Money Laundering Directive - the European Commission has published the list of trusts and similar legal arrangements governed under the law of the Member States as notified to the Commission (see Official Journal of the European Union C 360 of 24 October 2019, C 434 of 27 December 2019, C 136 of 27 April 2020).

Italy has notified the Commission as legal arrangements related to trusts: a) "Mandato fiduciario" and b) "Vincolo di destinazione".

On the basis of the communications notified by the Member States, the European Commission has drawn up a report to the European Parliament and the Council "assessing whether Member States

have duly identified and made subject to the obligations of Directive (EU) 2015/849 all trusts, and similar legal arrangements governed under their laws”.

The document notes that sixteen Member States have declared that their respective law does not govern any trust or similar legal arrangement.

The remaining Member States have notified trusts or similar legal arrangements governed under their laws as follows:

- three Member States and the United Kingdom have notified that trusts are governed under their respective legal systems and three other Member States (including Italy) have notified that trusts are recognized in their territory under the provisions of the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition;

- seven Member States have notified similar legal arrangements governed under their national law;

- two Member States (Germany and Italy) notified legal arrangements not expressly regulated under their national law but based on the general principle of autonomy of the contracting parties and delimited by case law and doctrine.

The notifications were examined by the Commission which, commenting on what was notified by Italy, noted - with regard to the "Mandato fiduciario" (fiduciary mandate) - that fiduciary contract is an arrangement based on the general principle of the autonomy of the contracting parties and delimited by court judgements and doctrine and, therefore, not typified by national law as it is in France (Fiducie), Luxembourg (Contrats fiduciaries) and Romania (Fiducia).

In the document, the Commission notes, in fact, that "Although there are no national provisions regulating this type of contract, it customarily takes the form of a scheme that corresponds to that of a fiducie, with the same effects as regards the separation and transfer of assets to a fiduciary for the benefit of one or more beneficiaries ".

Based on the note drawn up by the Commission, the expression "Mandato fiduciario" appears generic and can lead to terminological and conceptual misunderstandings, also considering that in the communication it was added to the "Vincolo di destinazione" (which, up to the Commission, “consists of a scheme where the owner of immovable property or assets registered in public registers establishes a bond over such property”).

Our stance

The expression "Mandato fiduciario" appears generic and not self-explanatory, being able to include not only the roman "negozio fiduciario" and the "contratto di affidamento fiduciario" – involving the effects of a "*fiducie*" – but also any mandate of administration of assets on behalf of third parties, consequently not allowing the identification of the arrangements legally similar to trust included in this expression. It would therefore be desirable for Europan law to adopt a clear and homogeneous regulation of legal arrangements similar to trust.