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HIGHLIGHTS

Banks: non-performing loans are down

In December 2018, the Italian banking sector's non-performing loans decreased by 34% on an annual basis, compared with the -25.3% recorded in November, due to a number of securitisation transactions, as the Bank of Italy has highlighted in its publication "Banche e Moneta". In more detail, in absolute terms gross non-performing loans fell to euro 100.2 billion and their lowest level since July 2011 (at the end of 2017 they totalled euro 167.4 billion), while net non-performing loans fell to euro 29.5 billion, their lowest level since May 2010. As for private sector bank deposits, these grew less in December: + 2.6% on an annual basis compared with the previous month's +3.3%.

Zenith in the Banco BPM NPL securitisation

Banco BPM has completed the securitisation of euro 7.4 billion of non-performing loans. For the purchase, the special purpose vehicle has issued euro 1.9 billion of securities subscribed by institutional investors in three classes. The euro 1.4 billion senior class will benefit from the GACS state guarantee. Zenith Service has been appointed **Back-up Servicer, Monitoring Agent and Bondholder Representative**.

Umberto Rasori, the Managing Director of Zenith, comments: "Zenith continues to support Italian banks in the impaired asset disposal process, both in transfers backed by the state guarantee (GACS) and in private securitisations, thus confirming that we are a reference point in the provision of high added value services".

Bank funding: bonds down

According to data gathered by the Bank of Italy, the sum of net bonds issued on the international markets from 2011 to date has recorded an overall negative result of euro 47 billion. The impact of net bonds on total funding has fallen from 11.5% to 9.5% over the same period. These data evidence that the banks have funded themselves by resorting to **ECB guaranteed funding at subsidised rates**. The eurosystem has allocated to Italian banks around euro 240 billion of the euro 740 billion total earmarked for the euro area intermediaries through four long-term tied refinancing operations. The question of funding of the credit system is taking on a significant importance in view of the approaching maturity date of those operations completed from June 2016 to March 2017. And even more so at a time when, as Bank of Italy Governor Ignazio Visco warns, "the difficulties in accessing the international markets have worsened again recently with the re-emergence of tensions in the government bond market". Government bonds are indeed still very much present in the portfolios of Italian banks, particularly those which are "less significant"- euro 330 billion at the end of last November; a figure below the euro 400 billion peak reached at the beginning of 2015, but up on the end of 2017 euro 280 billion – and "they are exposing intermediaries to risks associated with further price drops".

(Source: Il Sole 24 Ore, 03/02/2019)

Changes to the law on securitisation: an overview

The Budget Law for 2019 (Law 145 of 30 December 2018) has brought a number of **changes to the law on securitisation** (Law 130 of 30 April 1999). The reform seems to be moving in two fundamental directions, one for the continuity and continuation of previous interventions on direct lending by special purpose vehicles, and the other aimed at redefining the "alternative" methods of securitisation pursuant to article 7 of the law, with the provision of new ones.

Proceeding in an orderly fashion, the following come under the first category of changes:

a) the possibility for special purpose vehicles to also subscribe **loan securities issued by limited liability companies,** provided that the corresponding securitisation securities are intended for qualified investors;

b) the **waiver of code-related limits for the issue of bonds** by public limited companies, in the event of their subscription by a special purpose vehicle and the listing of the related securitisation securities on a regulated market or an MTF;

c) **expansion of the range of prospective borrowers for loans** granted by the special purpose vehicle such as to also include micro-enterprises, providing that they have euro 2 million or more on their balance sheet;

d) the now recognised possibility for special purpose vehicles (and their individual sub-funds) to invest in **different types of assets**, their being able to freely combine purchases of loans originated by third parties, subscription of debt instruments and the granting of loans.

Even taking into account some outlines which are uncoordinated with respect to the previous legal situation, these aspects of the reform are nevertheless less problematic than the new scenarios which the second group of changes would appear to outline.

In this group we include the following:

i) the (re)definition of the regulatory framework applicable to securitisation by means of disbursement of a loan (sub-participation); and

ii) the introduction of securitisation of proceeds derived from the ownership of immovable assets and registered movable assets.

With regard to the first type of securitisation, from the new provision there emerges – as a characteristic of the institution – the heterogeneity of the purposes to which it may be directed, intending thereby the creation of both so-called "synthetic" securitisations (for the transfer of the risk of first loss to performing assets for the purpose of managing regulatory capital), and so-called "traditional" securitisations, but without the transfer of the legal ownership of the underlying assets (and which could, for example, include whole business securitisation transactions).

A central (although the law indicates it to be only prospective) element of this case in point would appear to be a new (and vague) tool for allocating and segregating the "loans themselves, as well as those rights and assets which in any way constitute the guarantee of repayment of such loans" to the financing special purpose vehicle (or "for other purposes"), including through the establishment of a new type of lien (which the Ministry of the Economy and Finance will be required to regulate through regulatory means).

This expectation raises concerns, not only in terms of the broad delegation to secondary rules

on matters for which one would have expected legislative intervention (having as its subject limitations to financial liability and the establishment of collateral), but also because it shows a discrepancy (not better specified) between the concepts of asset allocation and segregation and elements of possible confusion regarding their function and that of collateral.

Finally, as regards the introduction of securitisation of proceeds derived from the ownership of immovable assets and registered movable assets, the laconic nature of the new letter b-bis) of article 7, paragraph 1, is such as to render unclear the structure of the transaction which the legislator intended to type (or, more correctly, nominate). In the desire to envisage a real innovative scope for this tool, it should be assumed that the special purpose vehicle may become the owner of the immovable assets, registered movable assets and other property rights or individual rights whose proceeds would be securitised. It therefore goes without saying that in the absence of a secondary tier rule (which, moreover, is not even foreseen), the reconstruction of the case in point will be assigned to the condition of compatibility (itself uncertain) with the rule made in the first 6 articles of the law stated in the first paragraph of article 7, with all the likely uncertainties on fundamental aspects such as the subject of the segregated assets and the tax and accounting treatment applicable to the special purpose vehicle.

To conclude, while recognising that the reform has the merit of helping to support the expansion of securitisation as an alternative source of credit for companies to the traditional banking channel, and also that it has pinpointed a number of market needs and lines for further future development, the question arises as to whether – now twenty years on from the adoption of the law - the time has come to move on to a broader reflection which departs from the logic of emergency, alluvial and particularistic action and aims ambitiously to restore the institution to greater consistency and internal orderliness, including with a view to further developments. The difficulties which the operators are (not) resolving for the reconstruction of the legal and tax regime applicable to the so-called REOCos within article 7.1, paragraph 4, of the law, constitute a clear warning that the legislative technique (in a sector itself marked by a very high technical content) should follow higher standards of simplicity and clarity.

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