Issuance of the Euro-MTN programme in Italy

Advantages of issuing in dematerialised form

December 2022

EURONEXT SECURITIES

/ MILAN

Contents

Introduction

This paper aims to support issuers in identifying opportunities for efficiency in the areas of issuance and post-trade services for debt securities. It analyses specifically how dematerialisation can address, and in most instances solve, certain legal and operational obstacles in the issuance and management of debt securities, in particular international debt securities, to enhance the competitiveness of the Italian market and streamline access to international capital markets.

The need to overcome barriers to efficiency and to identify areas of harmonisation in the bond issuance process has been highlighted by several market initiatives, including the recent activities of the European Central Bank's Debt Issuance Market Contact Group (DIMCG). The DIMCG has identified a number of complexities in the issuance process, from pre-trade through to post-trade, and additional features of the issuance process that could benefit from efficiency improvements and cost reduction. In particular, the group has highlighted the benefits of increased digitalisation of the issuance process and the need to remove conflicts of laws issues which, among others, could be perceived as obstacles to the full dematerialisation of debt securities in the international market.

Indeed, the DIMCG has invited Member States "[…] to allow and facilitate – where necessary – the issuance of debt instruments in fully dematerialised (electronic) form and to work towards removing conflicts of laws with regard to the recognition of the rights and obligations attached to such securities".[1]

The main focus of this Paper is, therefore:

- to analyse Italian issuers' issuance practices in the Eurobond market – especially the use of the Global Note form – with the purpose of clarifying certain conflicts of law aspects that over time have been considered as preventing the issuer from choosing full dematerialisation; and
- to describe the advantages of dematerialisation, from operational and legal simplification, to the significant enhancement of issuance digitalisation and lifecycle management.

[1] DIMCG Advisory report on debt issuance and distribution in the European Union

For historical reasons, international debt securities are today issued according to traditional issuance structures, preventing the use of the fully dematerialised electronic form and its advantages.

This practice should be reconsidered, with the aim of supporting the competitiveness of the Italian market and infrastructures.

Following Brexit and the resulting tendency of European issuers to move away from the choice of English law to regulate the terms and conditions of their bonds, it is worth investigating the causes of such consolidated market practice and the reasons why it would be more advantageous for issuers to issue in Italy in dematerialised form, avoiding unnecessary complexities both in respect of the legal documents necessary for issuance, and the operational process for securities lifecycle management.

In the post-Brexit scenario, issuing outside Italy according to issuance structures still connected to English law creates additional complexities, costs and an inaccurate perception of the country’s risk, ultimately leading to negative consequences for the Italian capital market.

Issuing in Italy in dematerialised form results in a number of benefits:

i) eliminating the need to issue paper notes
ii) improving time-to-market processes
iii) improving cost efficiency and operational advantages

Consequently, issuing international debt securities in Italy in dematerialised form can significantly contribute to adding value to the Italian market and financial system.

This is in line with the objectives sought in the green paper "The Competitiveness of Italian Financial Markets in Support of Growth," promoted by the Italian Ministry of Economy and Finance, which are to accelerate the reform process of the Italian capital market and increase the attractiveness of the Italian system by supporting growth and investment, in line with the objectives of the National Recovery and Resilience Plan (PNRR). The development of the capital market represents a strategic means to support public finance, facilitating the inflow of private resources and encouraging investments in areas such as digitalisation, innovation and sustainability, which are at the heart of the strategic objectives of Italy's PNRR.

Euronext Securities Milan (formerly Monte Titoli) is an integral part of the domestic market infrastructure and thus part of the Italian capital market. In recent years, despite the crisis situation that began with the COVID 19 pandemic, Euronext Securities Milan has continued to demonstrate resilience and extreme efficiency.

In this paper we demonstrate how Euronext Securities Milan can support the issuance of international debt securities in Italy, in line with the aim of full dematerialisation and allowing issuer to benefit from the advantages of electronic issuance.

1. Chapter 1

1.1 Overview

In the past, Italian issuers of bonds for European institutional investors tended to issue Global Notes and list bonds on the Luxembourg Stock Exchange, and choose English law as their governing law, thus electing English Courts as competent *fora*.

Over time, Italian issuers' practice of choosing English law to be the governing law for their bonds led operators in this market to conclude that the legal regime relating to the form, title and circulation of bonds should be brought under English law as well.

In other words, issuers considered that it would be preferable and more efficient if the *lex tituli,* i.e., the law creating their bond (i.e. the law of issuance), corresponded to the law they had chosen as the law governing the terms and conditions of the bond (i.e. the underlying bond legal relationship - *lex contractus*). According to some market operators, this promoted simplification and convenience: English law was perceived as easier to "adapt" to the needs of the market.[2]

As recently highlighted by authoritative scholars[3], there is scope for reconsidering this assumption in the light of the applicable rules addressing conflicts of law.

With Brexit and during the months following the exit of the United Kingdom from the European Union, the tide has turned. Italian issuers have begun to choose their domestic law, rather than English law, as the law governing the terms and conditions of their bond issuances. As a consequence, the governing law of bonds is now often Italian law.

---

[2] See also Chapter 4
[3] Dematerializzazione obbligatoria di titoli soggetti alla lex societatis italiana, Prof. Raffaele Lener and Grazia Bonante, Lener & Partners

It is worth highlighting that this new practice of issuing under the same law as the issuer is becoming common in all major European countries, on the basis of considerations similar to those mentioned in this paper, and also at the request of trade associations and policy makers.

Indeed with the implementation of Brexit, the use of English law as the law governing bonds has become impractical for a variety of reasons.

First, the rules regarding the eligibility of assets as collateral for monetary policy funding in the Eurosystem include strict limitations on the use of securities issued outside the European Economic Area.

Furthermore, as far as the banking institutions are concerned, the provisions concerning minimum requirements for own funds and eligible liabilities (known as MRELs) include limitations on the inclusion of securities issued under the law of a non-EU country in the banks' own funds.

Since the United Kingdom has acquired the status of 'third country', there are now questions as to whether the bonds of Eurozone issuers that are governed by the law of a third country can be deemed as having been issued within the European Economic Area, and whether they meet MREL requirements.

Consequently, the practice of choosing English law for the underlying relationship has changed in favour of Italian law.

Nevertheless, operators have for the most part continued to follow their previous practice for the terms governing the issuance of the bonds, by issuing bonds in Global Notes governed by English law.

In other words, issuers have retained their longstanding practice of issuing bonds in the UK with consequent application of English law *lex tituli (*which corresponds to the law of the Country where the securities are issued).

Room for efficiency in Bond issuance: recommendations of the DIMCG

As anticipated in the introduction, areas in need of improvement in the bond issuance and distribution processes are acknowledged at a European level.

The European Central Bank has established the Debt Issuance Market Contact Group (DIMCG)[4] in order to address concerns, raised in the public consultation of May 2019, about the need to increase the efficiency of the issuance process and distribution of securities in the primary market.

[4] For further information please see https://www.ecb.europa.eu/paym/groups/dimcg/html/index.en.html

Issuance practices, and the use of Global Notes in particular, were analysed by the ECB group of experts. In the Final Report of the DIMCG, while inviting Member States "to allow and facilitate the issuance of debt instruments in fully dematerialised electronic form and to work towards removing conflicts of laws with regard to the recognition of the rights and obligations attached to such securities", the group of experts attempted to understand the rationale for continuing to use the Global Note form instead of full dematerialisation, and concluded that the use of Global Notes is essentially due to:

i. "full lack of possibility of dematerialisation" – although there are only a few remaining countries in Europe, there are still jurisdictions which require a security to be represented by a piece of paper;

ii. "robustness with regards to conflict of laws" – there are several laws to consider when setting up an international debt security (law of issue, law of issuer CSD, law of establishment of issuer, law of establishment of investors, etc.). To manage potential conflicts of laws the lowest common denominator is used – a physical security in bearer form which is acknowledged (not challenged) under most jurisdictions. This will not lead to an improvement of the market practice; on the contrary, it may represent an incentive to maintain the status quo;

iii. "avoiding registration requirements under law of issuance" – the available forms of a security are primarily governed by the law of issuance, i.e., the law under which the claim on the issuer represented by the security is construed. Under the most frequently chosen governing laws for international debt securities issuance (i.e. English or New York law), registered securities can only be issued in fully dematerialised form. In order to avoid attached registration requirements there is a preference for a bearer instrument which in turn can only exist in physical form under these laws (the Global Note)[5];

iv. "tax reasons and selling restrictions" – for example, for securities issued by US entities to non-US investors, US tax law favours bearer form (as it has narrower reporting requirements). On the other hand, in other aspects US tax law (TEFRA) prohibits or restricts bearer form within the US or for securities marketed to US investors; and

v. "legacy/historical reasons" – historically, when the Eurobonds markets developed in the seventies, the bearer form of a security was considered by investors to be more robust for banking secrecy (i.e. their privacy and their identity remaining hidden also from the issuer). However, today there is no practical difference with regards to global registered and global bearer

[5] For additional information on the nature of the entitlement to securities according to Italian law: www.euronext.com/it/post-trade/euronext-securities/milan/quadro-normativo/csdr/cosa-significa-csdr-i-nostri-clienti

forms in this respect. Some investors perceive physical bearer form to be more robust in case of potential operational disruptions, or for example if the issuer CSD or a depository were to go out of business.

The considerations listed above will be further elaborated in the following paragraphs. However, we can conclude that in most EU jurisdictions, the hurdles to creating a dematerialisation regime either no longer exist, or are gradually being eliminated.

Given the DIMCG's invitation to facilitate the possibility of issuance in fully dematerialised electronic form and the removal of issues related to conflicts of law, in particular with respect to the recognition of the rights and obligations attached to bonds, the soundness of the choice of law in a context characterised by international elements should be specifically tested against the applicable rules relating to conflicts of laws.

Furthermore, it should be considered that issuance in Global Note form, where there is no link to English law other than the *lex tituli* (as happens with the current practice of Italian issuers that have started to choose Italian law for terms and conditions), implies additional hurdles in terms of cross-jurisdictional implications, legal risk connected to the related complexity of the legal documentation (see Chapter 3) and operational complexities that could be easily solved *ex ante* by choosing to issue in Italy in dematerialised form.

Consequently, it would appear that – at least as far as Italian issuers are concerned – the choice of this particular issuance structure resonates with the "legacy/historical reasons" argument given by the DICMG i.e., as a simple market practice. The market is now structured in such a way that recourse to Global Notes has become a convention, and is no longer the optimal solution for practical reasons.

2. Chapter 2

2.2 Dematerialisation regime under Italian law

The Italian legislator has been considered a pioneer in establishing a mandatory dematerialisation regime in its financial law. The Italian legal system nowadays comprises a longstanding, perfected and efficient dematerialisation framework, encompassing the advantages of book entry representation of securities in terms of efficiency and integrity of the issuance since the very early stage of its implementation.

The central securities depository, designed to facilitate the trading of financial instruments, came into being in Italy in 1978 with the establishment of Monte Titoli S.p.A. (now known as Euronext Securities Milan).

With the adoption of legislative decree no. 58/1998 (the Financial Consolidated Act or FCA), the Italian legal system implemented a private-enterprise-led management for central securities depository services. The FCA introduced a competitive system, allowing the coexistence of more than one central securities depository carrying out the relevant activity, subject to the authorisation of the competent authorities.

The modernisation process started by the FCA took another significant step a few months later, with the adoption of legislative decree no. 213/1998 (Euro Decree). The Euro Decree made **mandatory**, under certain circumstances, the dematerialisation of financial instruments, and established that their issuance and circulation could only take place through the central depository in the form of book entries.

With legislative decree no. 27/2010 implementing the Shareholders' Rights Directive, all relevant provisions were rearranged and concentrated in a single section of the FCA.

With the adoption of Regulation no. 909/2014 (CSDR) – implemented in Italy by legislative decree no. 176/2016 – EU law has made a step forward in terms of the harmonisation of rules on book-entry registration of transferable securities, to the extent it provides for the recording in book-entry form of all transferable securities admitted to trading or traded on the trading venues. In this respect, CSDR does not impose a specific method for the initial book-entry recording, which should be able to take the form required by the law under which the securities are issued, in line with private international law provisions.

In compliance with and pursuant to the CSDR requirements, with the resolution no. 21195 of 18 December 2019. Consob (re-)authorised Monte Titoli (now known as Euronext Securities Milan) as "central securities depository" within the meaning of CSDR.

Considering the early introduction of mandatory dematerialisation, both Italian law and Monte Titoli were already extensively compliant with CSDR framework on book entry at the time when such rules came into force.

Currently, securities governed by Italian law that are admitted for trading or traded on Italian trading venues – or on the trading venues of another European Union country with the issuer's consent – can exist only in dematerialised form. These securities exist solely by being registered on the books of the CSD, with no paper form note being held in custody either by the CSD or any other third party. Rights on such securities derive exclusively from the book entry registration on the securities account of the account holder with the relevant intermediary.

A single central securities depository must be chosen for each issuance of dematerialised securities and each intermediary holds an account with such CSD.

Transfers of dematerialised financial instruments take place through the intermediary from the seller's account to the buyer's account by way of book-entry registration.

After registration, the account holder has full and exclusive title to all rights attaching to the financial instruments registered therein, in accordance with the rules governing each of them.

It also worth highlighting that, when an issuer wishes to propose the repurchase or exchange of outstanding bonds or convene a general meeting of bondholders to seek their approval to amend the terms and conditions of bonds, the bondholder identification process applicable to dematerialised securities governed by Italian law allows issuers to identify the bondholders, thereby facilitating their liability management transactions.

3. Chapter 3

3.1 Main legal and operational advantages of issuance and circulation of dematerialised debt securities

Accepted wisdom[6] has tended to suggest that tested securities issuance structures are more efficient than innovative structures as they permit the development of economies of scale, thus reducing transaction costs, and enhance the predictability of the outcome of the process.

The impact of Brexit on the financial markets seems to challenge this in respect of international issuances of debt securities, as alternative and innovative issuance structures may emerge that can reduce costs significantly for issuers and streamline the entire process.

Many Italian issuers systematically resort to international capital markets for funding purposes. A common market practice for issuances of debt securities to international investors has developed and market operators rely on such tested structures to minimise risks and standardise internal procedures.

In particular, one of the main aspects that institutional investors have systematically considered when deciding to allocate investments in notes issued by Italian issuers concerns the possibility to set out contractually the choice of the English jurisdiction. Institutional investors consistently showed clear preference for the exclusive jurisdiction of the English courts as they considered that a final judgment released by an English court is (i) predictable as to its content and (ii) promptly released.

The ongoing impacts of Brexit are likely to affect both the propositions above, in particular when a new cohort of English judges are in place that are "Brexit-native" (i.e. judges that have been nominated after Brexit whose legal education will include English law only), who are likely to struggle to take decisions based on pure EU law.

In addition, all the requirements set forth under article 64 of the Law 31 May 1998, no. 218 as subsequently modified must be met in order for the foreign decision to be acknowledged and enforced in Italy (*exequatur*). The possibility cannot be ruled out that longer acknowledgement procedures will affect the timing and the overall responsiveness of the English Court's final judgment.

---

[6] This section has been drafted in collaboration with Federico Morelli, Partner Cappelli RCCD Studio Legale

As a consequence, Italian issuers are now seeking alternative issuance structures, with a view to cost reduction and effective simplification of the documentation. Indeed, notes issued in Italy would benefit from a protective legal environment, led by Euronext Securities Milan (formerly Monte Titoli), which could significantly reduce certain costs related to the issuance of notes.

Terms and Conditions

Many Euro Medium-Term Notes (EMTNs)[7] now include two sets of terms and conditions (*regolamento del prestito*), one governed by Italian law and the other by English law. Recently, as mentioned in Chapter 1, market practice has shown a preference for issuances of notes governed by Italian law, in particular among banks, but many base prospectuses still provide for the double set of terms and conditions.

There is no apparent reason why issuers should still pay the cost of maintaining a double set of terms and conditions (which are substantially identical, except for the bail-in acknowledgment clause, the governing laws clause and the jurisdiction clause, and some minor tweaks).

Global Notes

An enormous layer of complexity is added by the fact that notes are still issued outside of Italy to avoid the obligation to dematerialise the securities, and still issued in paper form as Global Notes.

This results in (i) issuers issuing notes regulated by Italian law in London and (ii) the agreement of related payment mechanisms in an agency agreement that is governed by Italian law, but allows the notes to be issued outside of Italy, in order to have them in global form.

Otherwise, payments on the English law notes would be governed by an English law agency agreement, in line with common practice pre-Brexit. This has led to the current practice of having two separate agency agreements, one governed by Italian law (applicable to Italian law notes), the other by English law (applicable to English law notes).

In addition to the above, the entire Global Note structure appears to be excessively complicated, even byzantine.

Global Notes represent the entire issue and are held by (or on behalf of) the clearing systems (Euroclear / Clearstream). Note holders do not necessarily hold the notes themselves, as they either hold them directly in accounts at

[7] In this text, we will simply refer to notes issued on a standalone basis as "Eurobonds", and to issuance platforms, as well as to the relevant drawdown notes, as "EMTNs".

the clearing systems or indirectly through custodians who have accounts at the clearing systems.

Any transfer of notes between accounts can be effected by electronic instructions to the clearing systems. Circulation of the notes is then governed by Belgian (Euroclear) or Luxembourg (Clearstream) law (*lex loci rei sitae*).

A Global Note can be issued in the form of:

- a Classic Global Note, which can be bearer or registered; this requires a physical annotation on an attached schedule to indicate the outstanding amount of the issuance and is deposited with, and serviced by, common depositories appointed jointly by the clearing systems.

- a New Global Note, which can be bearer only; this indicates the outstanding amount of the issuance referring to the records of the clearing systems. New Global Notes are deposited with common safekeepers and serviced by common service providers, each appointed jointly by the clearing systems.

In the case of Bearer Notes, the Global Note is issued to a financial institution acting on behalf of both clearing systems. This financial institution, which also holds the notes, is referred to as a "common depository" if the note is a Classic Global Note, or a "common safekeeper" if the note is a New Global Note. Payments on the securities are made by the issuer to the common depositary or the common safekeeper (as the case may be), which then credits the holder's account in the clearing system.

In case of Registered Notes, the structure is analogous, with the exception that a nominee company associated with the common depositary or the common safekeeper (as the case may be) is entered in the register as the holder of the securities. The issuer will then make payments to the nominee (and not to the common depositary or the common safekeeper) which then credits the holder's account in the clearing system.

In both cases above, Euroclear / Clearstream will also act as common safekeeper for any New Global Note that is intended to constitute Eurosystem eligible collateral.

In addition to the above, a Global Certificate is issued as a Temporary Global Note, subject to conversion into a Permanent Global Note, according to the terms and conditions of the issue.

A Temporary Global Certificate is issued for the period between the issue date of the notes and the end of the TEFRA D restricted period, during which distributors generally may not sell the securities to a US person or in the US (lock-up period). The restricted period is usually 40 days from the issue date.

Once the lock-up period is terminated, the so-called seasoning of the note is complete, and restrictions on the sale of the notes into the US are lifted. The clearing systems collect certificates from noteholders confirming non-US beneficial ownership before exchanging the Temporary Global Certificate into a Permanent Global Certificate (or definitive bonds).

A Permanent Global Certificate is then issued when the temporary Global Note has passed the lock-up period and has been certified as being held by a non-US beneficial owner. Permanent global certificates are issued on the issue date if the relevant issuance does not require a TEFRA D certification.

The abovementioned structure entails an additional problem whereby, if the issuer fails to issue definitive notes (whose issuance is a cost for the issuer), a noteholder holds exclusively rights against the clearing systems (and not against the issuer, since the noteholder does not have any privity of contract with the issuer).

To resolve this, a trustee must be appointed (and trustee's fees should be paid by the issuer) or, alternatively, a deed of covenant should be executed, so as to confer to the account holder rights against the issuer, provided that such account holders are sufficiently designated as the beneficiaries of the deed poll.

Moreover, a contractual link must be established also between the issuer and the clearing systems by means of three separate documents, namely:

- an Issuer-ICSD Agreement,
- an Issuer Effectuation Authorisation, and
- a common safekeeper election form.

If, on the other hand, the notes were issued in Italy, they would be issued in dematerialised form and held through Euronext Securities Milan. No agency agreement would be necessary, since Euronext Securities Milan would provide payment services required by the terms and conditions.

Similarly, since the notes are dematerialised, no paper Global Note would need to be prepared (either temporary or permanent), the noteholder would not need to request the definitive notes, and no authentication of the title by the local paying agent would be required.

In addition, the terms and conditions qualify as an agreement between the issuer and each noteholder and rights on the securities result from the book entries on the securities accounts instead of being embedded in the paper form certificate; therefore the noteholder is directly entitled to enforce his/her rights against the issuer (and not in the first instance against Euronext Securities Milan or the clearing system).

Consistently, no trust deed and no deed of covenant would be necessary.

Subscription and Dealer/Programme Agreements

The legal structure for these agreements would be significantly affected. Amendments would be necessary to reflect the new framework in (i) the choice of law clause, (ii) the jurisdiction clause and (iii) the conditions precedent, with specific reference to the opportunity to have (and also to pay for) an English law opinion covering the programme and each subsequent issuance of the notes.

Indeed, the parties should opt for Italian law as the governing law of the agreement. Where the issuer is an Italian company and the issuance is entirely subject to Italian law, there is no reason to opt for a different legal environment, also considering the limited gold-plating that has been applied to EU law provisions.

Coherently, the jurisdiction clause should mention the Courts of Milan or Rome depending on the preference of the issuer.

This point might trigger some resistance from some intermediaries, who might again show concern as to (i) the predictability of the decisions of the Italian judges due to the complexity of the technicalities surrounding an issuance of debt instruments and (ii) the expected timeframe to reach a final decision, compared to tested issuance structures under English jurisdiction.

This argument, however, does not really appear conclusive since both goals (predictability and promptness) can be reached by means of an arbitration clause whereby issuer and intermediary each appoint one arbitrator, which will then jointly appoint the third arbitrator that will chair the collegium.

The above should also permit issuers to avoid costs related to the appointment of a process agent in London and any other costs related to the enforcement of the issuer's rights in England.

ISIN Code

Some market operators have raised a point concerning the ISIN Code of a bond issuance under the Italian structure. The relevant ISIN code would not be marked as "XS" but as "IT" and this could, theoretically speaking, induce investors to consider such an "IT" note as less appealing than the same note issued by the same issuer under an "XS" code. This argument seems to make reference to an increased country risk that may affect Italian law issuances.

In this respect, the ISIN code does not embed any country risk (nor any additional country risk) that is not already captured by the issuer risk, which depends on the issuer and not on the issuance structure. Investors – and in particular sophisticated investors – will take their investment decisions based on fundamentals of the issuer (as evidenced by the prospectus, the annual report and others) and not on the ISIN code, which will neither reduce nor increase the issuer's risk.

English law opinion

Finally, being an issuance fully regulated by Italian law, there are no aspects that are relevant under English law that need to be covered by an English law opinion, the costs of which can then be spared by the issuers.

Form of the documentation and listing venues

No variations will be necessary. The prospectus would still be prepared in English language, with the same structure stemming from the Prospectus Regulation, in order to keep it readable for the investors and for the listing venues involved (first of all, CSSF/Luxembourg Stock Exchange and CBI/Euronext Dublin).

See below a summary table showing the differences between the current structure and the proposed new Italian law structure, to highlight the actual cost reduction that issuers could reach.

TERMS	CURRENT STRUCTURE	NEW ITALIAN STRUCTURE
Terms and conditions	Two sets: ▪ one governed by Italian law ▪ one governed by English law	One set governed by Italian law
Programme agreement / subscription agreement	Governed by English law with a jurisdiction clause for the English courts	Substantially the same content but for the choice of Italian law and the jurisdiction of the Courts of Milan or Rome
Global Note	Temporary or Permanent possibility to request a definitive Note	Not required: full dematerialisation of the securities
Place of issuance	London (UK)	Italy
Paying agency agreement	Necessary to carry out payments under the notes	NOT necessary: Euronext Securities provides for payment services
Trust deed / deed of covenant	Required	NOT required
Clearing system	Euroclear/Clearstream	Not required: securities are held through Euronext Securities Milan, though they are eligible to be kept in Euroclear or Clearstream for investors choosing to do so
Process agent	Not mandatory but systematically requested by subscribers	NOT required
Listing agent	Required	Required
Programme manual	If required	If required
Closing agent	If required	If required
ISIN	XS	IT
UK law legal opinion	Required	NOT Required
Enforcement costs in UK	Required	NOT Required
Jurisdiction	English courts	Arbitration

Table 1. Summary table showing the differences between the current and proposed structure

Applicable law

In addition, the legal environment would also be massively simplified whereby different jurisdictions concur to regulate an issuance of debt securities on the international capital markets.

Terms	Current structure	New Italian structure
Terms and Conditions	English (or Italian)	Italian
Circulation of the Notes	Belgium / Luxembourg (Euroclear / Clearstream)	
Issuance of the Notes	English	
Company law	Italian	
Insolvency law of the issuer	Italian	

Table 2. Summary table showing the legal jurisdiction differences between the current and proposed structure.

With specific reference to any potential insolvency of the issuer, it should be clarified that the law which governs insolvency proceedings is the law of the country of the "centre of the debtor's main interests". The Italian courts will have jurisdiction if the "centre of the debtor's main interests" is located in Italy, but if the issuer is not Italian and the centre of its main interests is outside of Italy, the law governing the debt securities will not have any impact. If a non-Italian company chooses to issue debt securities governed by Italian law, such choice has no impact on the law applicable to any insolvency proceedings.

4. Chapter 4

4.3 Legal and operational flexibility of the issuance on dematerialised form

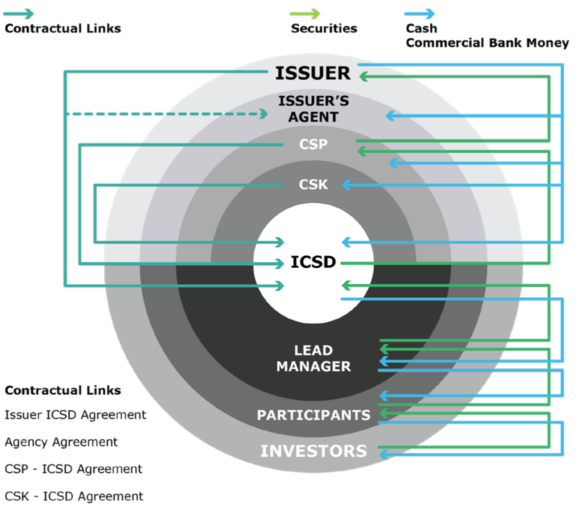
As anticipated in the previous section, the transition to a fully dematerialised issuance structure would increase legal coherence and would bring a necessary simplification of the documentation of the issuance.

As a consequence of the new issuance structure, the issuance process in dematerialised form and the securities lifecycle management is streamlined due to the lower number of entities and contractual arrangements.

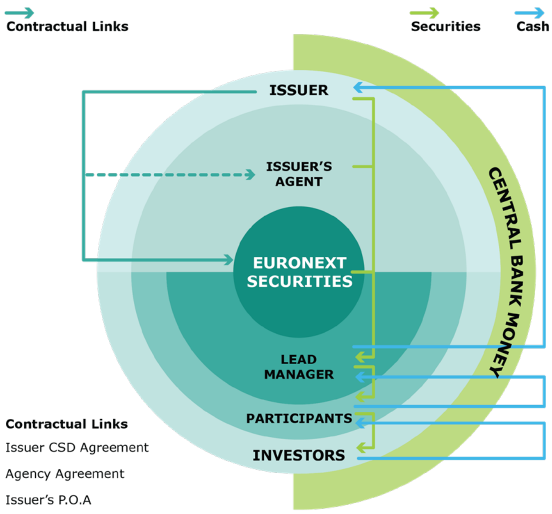
4.4 Advantages of the dematerialised structure

Comparative analysis of the two set-ups

NGN - New Global Note Structure



Dematerialised Structure



No wet-ink process

In the dematerialised issuance structure, issuance is fully digitalised and no Global Notes in paper format are needed, thus avoiding the need for physical meetings at the closing of the issuance to collect signatures on the Global Notes.

The Final Report of the DIMCG has identified as a specific risk the manual authentication or effectuation of Global Notes in the context of the settlement of the primary market transaction among ICSDs. Indeed, "the requirement for physical Global Notes and signatures in wet ink delays the process and results in additional costs and risks in both the syndication and auction models. The challenges and operational inefficiencies of handling and authenticating physical Global Notes increased in the context of the restrictions imposed to counteract the COVID-pandemic."[8]

In the dematerialised issuance structure, the securities issuance process is entirely managed by the CSD with no other entities involved in the deposit/custody of the securities. It is evident that the substantial reduction in steps, entities involved and respective legal documents will entail a significant reduction of costs for the issuer.

The fact that the issuer has a direct relationship only with Euronext Securities Milan also has a number of positive implications.

The information on corporate actions comes to Euronext Securities Milan from the issuer itself, the so-called "golden source". This direct relationship ensures that the information received is always accurate, complete and timely.

Only one contractual document

As explained above, some issuers have reported that, since the Global Note structure entails a contractual relationship not only with the ICSD but also with other entities (CSK/CSP, Common Depositary), any new issuance implies a review of the contractual documents with the ICSD.

Since the issuance in dematerialised form in Italy requires one single contractual relationship (with Euronext Securities Milan only), there is no need to update contractual documents when issuing new securities. This is particularly relevant considering the fact that scheduling is very tight and the time to market is essential for the success of the new placement.

[8] DIMCG Advisory report on debt issuance and distribution in the European Union, page 17

Fast onboarding of issuers

Upon the instruction of the issuer, Euronext Securities Milan credits the securities accounts of the issuer and of the CSD participants directly. Onboarding of the issuer and the account opening process with Euronext Securities Milan will be completed within five business days maximum.

Similarly, mandatory and voluntary corporate events are entirely managed end-to-end by fully straight-through processing (STP) by the CSD, upon the instruction of issuers and participants with shorter operational flows.

Operational flexibility

Operators have reported that the Italian CSD has constantly and reliably been able to provide bespoke solutions to support issuers' needs, for example in managing PIK bonds (bonds with a payment-in-kind clause) or in antidilutive warrants issuance.

Reducing the operational burden for convertible bonds

Issuing in dematerialised form directly with the Italian CSD helps to solve the operational burden stemming from cross-border conversions, specifically with respect to convertible bonds. The conversion of a security issued with an ICSD to a domestic security requires the switching of the security across two settlement systems (i.e. reverting from the ICSD to the domestic CSD). This type of operation is much more immediate when the conversion is done directly in the domestic market, as intermediaries immediately receive the securities in T2S, and they are also immediately available for collateral and auto collateral.

Proximity and direct access

All phases of admission and management of a financial instrument may require timely intervention timeframes and the need to manage market deadlines up to the last available moment. Direct access to a CSD connected to T2S allows the possibility to request extensions to settlement cycles in the case of structural issues, to allow the proper settlement of all instructions.

With specific reference to bank issuances, the dematerialised regime ensures payment flows are managed directly by the issuer, in a unitary and integrated manner on accounts in central bank money, without counterparty risks or costs related to the activation of credit lines.

More efficient use of liquidity and collateral

Indeed, this way the issuer may carry out all cash flows generated by its issuances by using the cash account in its central bank, where the greatest part of its liquidity is located (including mandatory capital reserve, collateral, credit lines in central bank, monetary policy operations). This makes it easier for the issuing bank to obtain more efficient use of liquidity and better optimisation of collateral.

Reduction of operational risks

At the same time, banks can use their own cash accounts to greatly reduce the operational risks associated with the payment process. The overall chain of payment becomes shorter and falls under the full control of the issuer. This reduces the risks of delays and errors in the payment process, together with potential associated reputational risk.

An additional advantage of the dematerialisation regime is that cash in central bank money is considered to be “risk free”. This means that by using its cash account with the Central Bank, the issuer is not required to assume counterparty risk (and the related capital absorption that the hedging of this risk could entail), to activate any credit line with an external paying agent, in order to support the related cost.

Non-bank issuers may, to a certain extent, experience similar dynamics, especially when the issuer's reference bank is different from the paying agent offering payment services on international issues. This situation happens frequently. Consequently, even for non-bank issuers, the use of a Eurobond requires the opening of an account relationship with a third party with all the related complexities and costs.

Direct access to T2S

The dematerialised bonds can benefit from an integrated workflow with Central Banks, with STP admission for collateral and auto collateral in T2S for intermediaries. Indeed, through the issuance with a CSD operating in T2S, operations of collateral and auto collateral take place directly in central bank money.

Faster collateral eligibility process

The eligibility of the bond as collateral with the Central Bank is driven by the Central Bank of the country where the bond is listed. Some issuers have highlighted that the timing for obtaining such eligibility in Italy is much shorter – with an average duration of one business day, triggering in some cases dual listing decisions - and the related process is significantly smoother and more efficient.

True global reach of investors

Issuing in dematerialised form with Euronext Securities Milan enables a full investor reach – both at a domestic and global level. IT ISIN codes are issued promptly, and securities created in Euronext Securities Milan can circulate freely via the settlement platform of the European Central Bank, T2S (TARGET2-Securities), thanks to links with all major European issuer CSDs. It is worth recalling that investors and custodians are at any time able to maintain their securities account with the custodian/CSD of their choice, in the local market.

Evidence of the above may be found in the outcome of the placement of Italian Government bonds, both when they are placed through auction and through placement syndicates. For instance, the latest available statistics from the Italian Ministry of Finance[9] show that some of the issuances of Government Bonds issued by auction in 2020 have been placed 90% to international investors. It is also worth noting that, of the Sustainability Bonds issued on 12 September 2022 by Cassa Depositi e Prestiti, 68% were placed with international investors.

[9] Rapporto sul Debito Pubblico 2020, Ministero dell'Economia e delle Finanze

Conclusions

In summary, the issuance practices typical of the Eurobond market are worthy of scrutiny by the market and market stakeholders for a number of reasons. Issuing in dematerialised form with Euronext Securities Milan can offer:

1. Same investor reach at a lower cost

There is a common misconception that reaching an international investor pool requires going through one of the ICSDs. However, the experiences of Cassa Depositi e Prestiti and the Ministry of Economy and Finance (MEF) with public debt have demonstrated this is not the case. One of the main benefits of using the T2S settlement platform is that local CSDs can achieve the same investor reach as ICSDs. The added advantage for investors is that they benefit from lower costs by safekeeping their bonds in local CSDs (75% cost reduction on average).

2. Reduced legal fees by issuing under local law

Issuing in Italy and choosing to issue under local legislation ensures legal consistency and avoids the need to engage with external counsel to issue under UK law. This means that issuers can have fewer advisors and external counsel involved. Issuers are able to maintain control of the legal process, and can manage the drafting of the prospectus and lead the discussions with the regulators. Issuers can also capitalise on their existing expertise in issuing under their local legislation, which makes the whole issuance process smoother and cheaper.

3. Increased operational efficiency through process harmonisation

Using the same CSD for all issuances also means that issuers can use the same business process, irrespective of the target currency or market. By streamlining the process and centralising on one CSD, issuers can significantly reduce their operational costs. Centralisation also paves the way for process improvement, as back-office staff will spend less time learning various settlement processes and systems, and can instead focus on improving one process, making it faster and more effective. The end result is a settlement process with fewer errors.

4. Issuing locally to strengthen local capital markets

Issuing in Italy helps reinforce the competitiveness of the Italian financial markets, recognising the value and high level of efficiency and digitalisation of the Italian market infrastructures. This is in line with the current policy objectives set out in the Green Paper "The Competitiveness of Italian Financial Markets in Support of Growth”.

5. Choice of law for the issuance

Issuing in UK and under UK law does not bring additional value in solving conflicts of law issues. On the contrary, the concurrence of multiple jurisdictions can be in itself the source of complexities and disadvantages in the post-Brexit scenario.

CONTACT

/ MILAN

Piazza degli Affari, 6
Milan, 20122
Italy

MTsalesteam@euronext.com

EURONEXT SECURITIES